

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-6218

United States Court of Appeals

For The Second Circuit

LYNN ARGO, ARNOLD ARGO, HELEN DENNIS, JAY GROSSMAN
JUDY SWEDE, individually and as Directors of Birch-
wood Towers Tenants Association, Inc., MAX WULFSON
and DORA FRIEDMAN, individually and BIRCHWOOD TOWERS
TENANTS ASSOCIATION, INC.,

Plaintiffs-Appellants,

-against-

PATRICIA HARRIS, individually and as Secretary of
Housing and Urban Development of the United States;
MORRIS SOSNOW, KATE SOSNOW, LEONARD F. SCHWARTZ,
JERROLD A. LIEBERMAN, BERNICE LIEBERMAN, and LORRAINE
S. SANFORD, doing business as Birchwood Towers #1 As-
sociates and doing business as Birchwood Towers #2
Associates; THE CONCILIATION AND APPEALS BOARD,

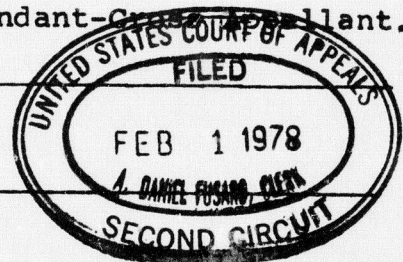
Defendants-Appellees,

-and-

THE HOUSING AND DEVELOPMENT ADMINISTRATION OF THE
CITY OF NEW YORK,

Defendant-~~Cross~~ Appellant.

APPENDIX



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Attorneys for Plaintiffs-Appellants
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MARC KAHN
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Of Counsel.

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DIST/OFFICE	DOCKET YR. NUMBER	FILING DATE MO. DAY YEAR	1a	DEMAND OTHER	JUDGE NUMBER	JURY DEM	DOCKET YR. NUMBER
207/1	76C 1969	10 27 76	2	890	0720		

PLAINTIFFS

ARGO, LYNN, et al

LYNN ARGO, ARNOLD ARGO, HELEN DENNIS, JAY GROSSMAN, JUDY SWEDE, individually and as Directors of BIRCHWOOD TOWERS TENANTS ASSOCIATION, INC.; MAX WULFSON and DORA FRIEDMAN, individually and BIRCHWOOD TOWERS TENANTS ASSOCIATION, INC.

DEFENDANTS

HUD, et al

PATRICIA HARRIS/(amended)
-CARLA HILLS, individually and a Secretary of HOUSING AND URBAN DEVELOPMENT OF THE UNITED STATES MORRIS SOSNOW, KATE SOSNOW, LEO NARD R. SCHWARTZ, JERROLD A. L. BERMAN, BERNICE LIEBERMAN, and LORRAINE S. SANFORD, doing business as BIRCHWOOD TOWERS #1 ASSOCIATION and doing business as BIRCHWOOD TOWERS #2 ASSOCIATES; THE CONCILIATION AND APPEALS BOARD; THE HOUSING AND DEVELOPMENT ADMINISTRATION OF THE CITY OF NEW YORK

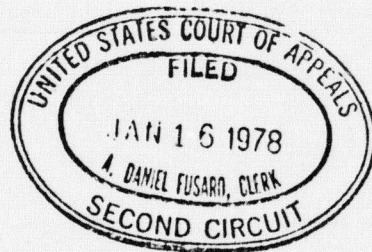
CAUSE

Action for injunctive and declaratory relief pursuant to 28 USC 2201, 5 USC 706.
*transferred from the Southern District of New York (US District Court) to the US District Court Eastern District of New York.

ATTORNEYS

For PLNTFFS:
ROSENSTEIN & KAHN
225 Broadway
New York, New York 10007
374-1438

FOR BIRCHWOOD DEFTS:
SQUADRON, ELLENOFF & BEN PLESEN
551 Fifth Ave.,
N.Y.N.Y., 10017
(212) 661-6500
FOR H.D.A.
W. Bernard Richland
Corporation Counsel
Municipal Bldg. NY 10007
By Charles Olstein



☐ CHECK
HERE
IF CASE WAS
FILED IN

DATE

FILING FEES PAID
RECEIPT NUMBER

C.D. NUMBER

STATISTICAL CARDS

CARD DATE MAILED

DATE	NR.	PROCEEDINGS
10-27-76		Cause on action transferred from US District Court Southern District of New York to US District Court Eastern District of New York filed. (Acknowledgement mailed to Clerk)
11-1-76		Table or authorities filed.
11-3-76		Affidavit of Fred W. Pfaender filed.
11-9-76		By PLATT, J.- Order dtd. 11-8-76 extending time for NYC to answer complaint to 12-8-76 filed.
11-5-76		Before PLATT, J. - Case called. Order to show cause for T.R.O. argued. Settle order in accordance with direction of the court.
11-10-76		ANSWER of certain depts & class counterclaim & crossclaim filed with proof of service. (5/6)
11-11-76		By PLATT, J.- Order to show cause dtd. 11-19-76 ret. 11-12-76 without proof of service why the Conciliation & Appeals Board of NYC should not be directed to advise depts to complete pending applications of hardships by the landlord etc., filed. (7)
11-15-76		By PLATT, J.- Order dtd 11-12-76 that the Landlord shall not initiate any dispossession action on the ground of failure to pay rent or improper holdover against any tenant-member who makes the payments set forth in paragraphs 2 & 3 etc. filed. See order. (8)
11-12-76		Before PLATT, J Case called, Motion for determination as a class Decision reserved.
11-22-76		By PLATT, J.- Order dtd. 11-19-76 extending time for NYC to answer depts landlord's cross-claim to 1-18-77 filed. (9)
11-22-76		Deft HDA's memo of law on due process issue filed. (10)
12-9-76		By PLATT, J.- Order dtd. 12-8-76 extending time for HDA to answer complaint to 1-12-77 filed. (11)
12-10-76		By PLATT, J.- Order dtd. 12-8-76 extending time for HDA to answer complaint to 1-12-77 filed. (12)
1/13/77		By PLATT, J. ,STIPULATION EXTENDING TIME , dtd 1/11/77 filed. DEF's time (HOUSING & DEVELOP. ADM. of NY) to answer extended from 1/12/77 to & including 1/24/77. (12)
1/13/77		By Platt, J Opinion & Order dtd 1/13/77 filed re that the Landlord has requested the class action, must submit, for approval, tho this Court within 2 weeks a proposed notice to the class members which should include the requirement of Rule 23 (c) 2 (A), that the class members can request exclusion within 30 days of service. Further, Landlord shall within 2 weeks of this Court's approval of the notice to class member serve all class members with that notice. (Captioned to order). (13)
1-14-77		Affidavit of Neal M. Goldman in opposition to pliffs' motion for an order directing Conciliation and Appeals Bd. to request Birchwood to complete pending applications, etc. filed. (14)
1-14-77		Reply affidavit of Jerrold A. Lieberman in support of Birchwood's motion for preliminary relief filed. (15)
1-14-77		Pliffs' reply affidavit (of Hyman Maron) in response to depts' opposition to preliminary injunction filed. (16)
1-14-77		Reply affirmation of Marc Kahn to depts' opposition to preliminary relief filed. (17)
1-14-77		Pliffs' reply memorandum in support of pliffs' motion for preliminary injunction filed. (18)
1-14-77		Depts' reply memorandum of law filed. (19)
1-14-77		Copy of order to show cause with proof of service filed. (20)
1-14-77		Memorandum of law of depts Birchwood in opposition to pliffs' motion for preliminary injunction filed. (21)
1-19-77		By PLATT, J=Stip. to extend HDA's time to answer to 1-24-77 filed. (22)
1-24-77		Answer of HDA to cross claim of depts Landlord's filed. (23)
		ANSWER to complaint filed. (24)

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF		DEFENDANT	DOCKET NO. 76C 1969
Lynn Argo et al		Hud et al	PAGE ____ OF ____ PAGES
DATE	NR.	PROCEEDINGS	
2/1/77		Letter of Charles Olstein to Platt, J dtd 1/27/77 filed re submission of Platt, J Opinion and Order is unnecessary, incorrect etc. (25)	
2-18-77		By PLATT, J.--Order dtd 2-18-77 granting class action certification on behalf of all tenants at Birchwood Towers on or after 9-1-76 etc. filed. (p/c mailed to attys) (26)	
2-18-77		Notice of appeal filed. (plffs) Copy to C of A. (27)	
2-22-77		Letter dtd 2-15-77 to J. Pltff from Neal M. Goldman re Mr. Rosenstein's letter dtd 2-14-77 filed. (28)	
2-21-77		XX	
3/2/77		Affidavit of Thomas Ortiz filed re affidavit of service-notice of Pendency of Class Action. (29)	
3/2/77		Request for exclusion filed. (30)	
3/4/77		Before Platt, J--case called-court imposes cost in the sum of \$25.00 against Corp Counsel-settlement order signed. ---	
3/4/77		BY PLATT, J. ORDER dtd 3/4/77. Fine Corp. Counsel atty. \$25.00 for arriving late. No excuse for being late except "attend to another adjournment in State Court." No call to chambers to explain, filed. (31)	
3/4/77		BY PLATT, J. ORDER dtd 3/4/77 and NOTICE OF SETTLEMENT. Ordered that all written objections, reasons, comments etc. in support which any party interested, tenant or counsel may wish to submit to HUD shall be served on all counsel & filed no later than 4/4/77 filed. (32)	
3-4-77		Fine of \$25 imposed on atty for HDA paid on this date to Court. mg	
3-10-77		Pltff's reply memorandum of law filed. (33)	
3-14-77		Letter dtd 3-11-77 to Clerk from Neal M. Goldman re requests for exclusion filed. (34)	
3-14-77		NOTICE OF APPEAL FILED. (USA) Copy to C of A) (35)	
3/16/77		Entire record and filed mailed to C of A. -----	
3/21/77		Acknowledgement rec'd from C of A on index on appeal & filed. (36)	
4-4-77		Copy of letter from Neal M. Goldman to Thomas O'Callahan dtd 4-1-77 filed. (37)	
4-21-77		Copy of letter from Neal M. Goldman to Thomas O'Callahan dtd 4-20-77 filed. (38)	
5-26-77		Copy of letter dtd 5-23-77 to Vita Weiss from Marc Kahan re objections to HUD pre emption filed. mg (39)	
6/2/77		Certified copy of mandate received from the C of A that the appeal and corss appeal may be withdrawn without costs and without attys fees and without prejudice to renew at a later date or upon final judgment. tk (40)	
6-14-77		Record on appeal returned from c of A. Acknowledgment mailed to Clerk. ld ==	
7-28-77		Before PLATT, J - Case called. Conference held & concluded.	
7-28-77		By PLATT, J - Order dtd 7-28-77 that deft Sec. H.U.D. complete consideration of the Landlord's application for preemption of local rent control, etc. filed. mm (41)	
9/9/77		Stenographers transcript dated 7/28/77 filed. tk (42)	

CIVIL DOCKET CONTINUATION SHEET

4a

PLAINTIFF		DEFENDANT	DOCKET NO. 76-C-1965
DATE		NR.	PROCEEDINGS
9/27/77			BY PLATT, J. ORDER that time in which Deft. Sec. of the Depart. of Housing & Urban Development has been directed to complete her consideration of the landlord's application for preemption of local rent control and to prepare and deliver to Court & parties her written decision outlining why preemption is necessary or unnecessary is extended from 9/26/77 to 10/3/77 filed. (43)
9/27/77			Notice of Appeal filed by AUSA for deft. from order dtd 7/28/77, filed. Copy mailed to C. of A. & docket entries forwarded. (44)
			(AUSA for deft. Sec. of HOUSING & URBAN DEVELOP. OF U.S.)
9/28/77			Letter of Prosper Parkerton to Platt, J dtd requesting that order attached to letter be entered etc.jj (45)
10-13-77			Letter of Prosper K. Parkerton, Assist. U.S. Atty. to Platt, J., dtd 10-12-77, with copy of determination of Dir. of Office of Loan Management of Dept of Housing and Urban Dev. outlining necessity of preemption and reaffirming decision fo 1/1/76.jm filed. (46)
10-31-77			Stipulation filed that attached documents are true copies of plttf's summons, complaint and order to show cause. (47)
10-31-77			Stipulation filed that attached documents are true copies of Memo of law of defts Birchwood Towers #1 and #2 in opposition to plttf's motion for preliminary injunction.(see doc.21) (48)
10-31-77			Stipulation filed that the attached are true copies of deft's order to show cause. (49)
10-31-77			Stipulation filed that the attached is true copy of plttf's memo of
10-31-77			Stipulation filed that attached is true copy of letter of Prosper Parkerton. (51)
10-31-77			Stipulation filed that attached is true copy of letter of Prosper Parkerton. (52)
11-1-77			Record on appeal certified and has handed to Prosper Parkerton AUSA for personal delivery to C of A. ---
11/3/77			Letter dtd 11/2/77 of Rothstein & Kahn to Platt, J. regarding additional points raised by Goldman and urging court to enter the corss-judgement settled by plttfs, filed.jm (53)
11-7-77			Acknow. recieved from C of A for record on appeal filed. fy (54)
11/10/77			By Platt, J.- Order dtd 11/10/77 denying plttfs' motion for preliminary injunction, and Landlords' motion for preliminary injunction restrained interference with collection of HUD approved rents Granted to extent set forth etc, filed.jm (55)
11-11-77			
11/15/77			Letter dtd 10/20/77 of Rosenstein & Kahn to Platt, filed.jm (56)
11/15/77			Deft Sosnow, et al, notice of settlement ret 10/20/77 @ 9:30, filed with Judgement affirming validity of 24C.F.R. Sec.403 35 Seq., Affirmation in opposition to defts proposed judgement, letter of C. Olstein to Platt re judgement as premature, letter of P.K.Parkerton to Platt, J. re Birchwood Towers #1 & #2 and proposed judgement, letter of N.M. Goldman to Platt, J.- re judgement containing 6 (dtd 10/ decretal paragraphs, filed.jm (57, 58, 59, 60, 61, 62)

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CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO. 76-C-1969
LYnn Argo et al	HUD et al	PAGE ____ OF ____ PAGES

DATE	NR.	PROCEEDINGS
11/18/77		Pltff's application to resettle preliminary injunction, ret. 11/ 18/77 @ 11:30AM or soon thereafter as counsel can be heard, filed.jm (63)
11-29-77	886	By Platt, J.-Presettled order of preliminary injunction filed. (64)
12/12/77		NOTICE OF APPEAL filed by pltff's atty. from order of PLATT, J. filed on 11/29/77 IN RE: Preliminary Injunction, filed. Copy mailed to C. of A. and docket entries forwarded. (65)
12-28-77		Copy of letter dtd. 12-27-77 from N. Goldman to L. Ackerman re: exclusion from class filed. fy (66)
12/29/77		RECORD on APPEAL received from C. of A. and Acknowledgment mailed to C. of A. <i>fy</i> .
12/29/77		Deft's notice of appeal, filed.jm Copies of dockets sent to C of a with copy of appeal. Copies sent to parties, filed.jm (67)
1/3/78		Copies of stipulations withdrawing appeal from C of A dtd 12/22/77 from P.K.Parkerton, Squadron, Ellenoff & Plesent, Ellis S.Franke, Rosenstein & Kahn, W.B.Richland, filed.jm (68, 69, 70, 71, 72)
1-5-78		Civil appeal scheduling order filed. fy (73)
1-5-78		xxxxxx copy of order from xxxxxxx withdrawing appeal filed xxx (74) xx

PART 403—LOCAL RENT CONTROL

Subpart A—General Provisions

Sec.

403.1 Scope and effect of regulations.

Subpart B—Unsubsidized Insured Projects

403.4 Applicability.

403.5 Rental charges.

403.6 Procedures.

Subpart C—Subsidized Insured Projects

403.8 Applicability.

403.9 Rental charges.

403.10 Procedures.

Subpart D—HUD-Owned Projects

403.12 Rental charges.

403.13 Procedures.

AUTHORITY: Sec. 7(d), of the HUD Act; 42 U.S.C. 3535(d).

SOURCE: 40 FR 49318, Oct. 22, 1975, unless otherwise noted.

Subpart A—General Provisions

§ 403.1 Scope and effect of regulations.

(a) The regulation of rents for a project coming within the scope of "Subpart B—Unsubsidized Insured Projects" is preempted under these regulations only when the Department determines that the delay or decision of the local rent control board, or other authority regulating rents pursuant to state or local law (hereinafter referred to as board) jeopardizes the Department's economic interest in a project covered by that subpart. The regulation of rents for projects coming within the scope of "Subpart C—Subsidized Insured Projects" is preempted in its entirety by the promulgation of these regulations. The regulation of rents for projects coming within the scope of "Subpart D—HUD-Owned Projects" rests within the exclusive jurisdiction of the Department.

(b) Any state or local law, ordinance, or regulation is without force and effect insofar as it purports to regulate rents of (i) projects for which a determination of preemption has been made pursuant to Subpart B, or (ii) projects coming within the scope of Subpart C or D. Compliance with such law, ordinance, or regulation shall not be required as a condition of, or prerequisite to, the remedy of eviction, and any law, ordinance, or regulation which purports to require such compliance is similarly without force and effect.

(c) It is the purpose of the Department that these regulations shall bar all actions of a board that would in any way frustrate the purpose or effect of these regulations or that would in any way delay, prevent or interfere with the implementation of any increase in rental charges approved by HUD.

(d) These regulations may be offered as a defense to a proceeding by whomsoever initiated, which may be brought or threatened to be brought against any owner, mortgagor or managing agent of a project subject to these regulations who demands, receives or retains, or seeks to demand, receive or retain, rental charges approved by HUD, or as a basis for declaratory, injunctive or other relief against any person or agency, public or private, who attempts to enforce, or threatens to enforce, any state or local law, ordinance, or regulation which is without force and effect by reason of this regulation.

Subpart B—Unsubsidized Insured Projects

§ 403.4 Applicability.

This subpart applies to all projects with mortgages insured or held by HUD, except those to which Subpart C applies.

§ 403.5 Rental charges.

The Department will generally not interfere in the regulation by a local rent control board (hereinafter referred to as board) of rents for unsubsidized projects with mortgages insured or held by HUD. However, HUD will preempt the regulation of rents for such a project when the Department determines that the delay or decision of a board, or other authority regulating rents pursuant to state or local law, jeopardizes the Department's economic interest in the project.

§ 403.6 Procedures.

(a) The mortgagor shall file its application for approval of increases in rental charges with the appropriate local office of HUD, and simultaneously therewith file an application for approval of those increases with any board in the area in which the project is located. The mortgagor shall also notify the board in writing that it has submitted an application to HUD for approval of the increases which may be affected by the provisions of the regulations in this subpart.

(b) The local HUD office will process the application for increases in rental charges in accordance with HUD's instructions and procedures promulgated in accordance with the authority contained in the National Housing Act.

(c) The mortgagor shall inform the local HUD office if the rents approved for the project by the board are lower than those approved by HUD, or if the board fails to render a decision on the mortgagor's application for increases in rental charges within a period of thirty (30) days following the filing of the application. The mortgagor shall furnish the local HUD office with any data supplied to the board not previously furnished to the local HUD office, and, if the mortgagor considers that the economic interest in the project is jeopardized by the decision or delay of the board, a statement to that effect together with the reasons therefor.

(d) The local HUD office will review the information submitted by the mortgagor, together with the decision of the board, if any, and shall make a report if it deems the delay or decision of the board jeopardizes the Department's economic interest in the project and the board will not modify its position to the satisfaction of the local HUD office. The report shall be sent to the Office of Loan Management in the Central Office (hereinafter referred to as Office of Loan Management) and shall include appropriate recommendations concerning the action that should be taken by HUD. A copy of the report and recommendations shall be furnished the Regional Office.

(e) The Office of Loan Management will review the report and will consider whether to approve rents higher than those approved by the board, or to approve a rent increase notwithstanding the failure of the board to reach a decision on the application. If the decision of the Office of Loan Management is to approve (1) rents higher than those approved by the board, or (2) a rent increase notwithstanding the delay of the board in reaching a decision, it shall issue a formal certification that it has preempted local rent controls as to such rents in order to protect the Department's economic interest in the project. Copies of the certification shall be transmitted to the mortgagor, the local HUD office, the Regional Office, and the board.

(f) The mortgagor may effect collection of the HUD approved rents after the expiration of 30 days notice to the tenants, subject to whatever rights a tenant may have under his lease.

Subpart C—Subsidized Insured Projects

§ 403.8 Applicability.

This subpart applies to all projects with mortgages insured or held by HUD, which receive a subsidy in the form of: (a) interest reduction payments pursuant to Section 236 of the National Housing Act; (b) below-market interest rates pursuant to Section 221(d) (3) and (5) of the National Housing Act; (c) direct loans at below-market interest rates pursuant to Section 202 of the Housing Act of 1959; or (d) rent supplement payments pursuant to Section 101 of the Housing and Urban Development Act of 1965 and/or housing assistance payments pursuant to (1) Section 8 of the United States Housing Act of 1937, or (2) Section 23 of the United States Housing

Act of 1937 in effect prior to January 1, 1975, if 10 percent or more of the units in a project receive either rent supplement payments or housing assistance payments.

§ 403.9 Rental charges.

The Department finds that it is necessary and desirable to minimize defaults by the mortgagor in its financial obligations with regard to projects covered by this subpart, and to assist mortgagors to preserve the continued viability of those projects as a housing resource for low-income families. The Department also finds that it is necessary and desirable to protect the substantial economic interest of the Federal Government in those projects. Therefore, the Department concludes that it is in the national interest to preempt, and it does hereby preempt, the entire field of rent regulation by local rent control boards, (hereinafter referred to as board), or other authority, acting pursuant to state or local law as it affects projects covered by this subpart.

§ 403.10 Procedures.

(a) The mortgagor shall file its application for approval of increases in rental charges with the appropriate local office of HUD.

(b) The local HUD office will process the application for increases in rental charges in accordance with HUD's regulations, including Part 401 of this chapter, and instructions and procedures, all adopted pursuant to the statutory authority described in Section 403.8, and shall notify in writing any board in the area in which the project is located that it is processing the application and, that, pursuant to this subpart, HUD has preempted the entire field of rent regulation by a board acting pursuant to state or local law as it affects the project.

(c) The mortgagor may effect collection of the new rents in accordance with the procedures described in Part 401 of this chapter. The mortgagor shall furnish the board a schedule of any new rents approved by HUD within ten (10) days after the approved rents have become effective. Notice to the board of the approved increases in rents does not confer upon the board a right to approve or disapprove the Department's action or to exercise jurisdiction over the implementation of the rent increases by the mortgagor. The sole purpose of the notice is to inform the board of the lawful rents that may be charged for projects covered by this subpart.

Subpart D—HUD-Owned Projects

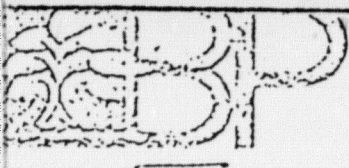
§ 403.12 Rental charges.

The Department has exclusive jurisdiction over the rents of all projects which it owns, irrespective of the existence, or the provisions, of any State or local rent control law or ordinance.

§ 403.13 Procedures.

(a) The local HUD office will notify in writing any local rent control board (hereinafter referred to as board) in the area in which the project is located that it is considering increasing the rents for a project within the scope of this subpart, and that the increases are expected to become effective after the expiration of thirty (30) days notice to the tenants, subject to whatever rights a tenant may have under a lease. The local HUD office will also notify the board that, pursuant to this subpart, the Department has exclusive jurisdiction over the rents for the project.

(b) After the increases have become effective, the local HUD office will furnish the board a schedule of the new rents that are being charged by HUD. Notice to the board of the increased rents does not confer upon the board a right to approve or disapprove of the Department's action, or to exercise jurisdiction over the implementation of the rent increases by the Department. The sole purpose of the notice is to inform the board of the lawful rents that may be charged for projects covered by this subpart.



7a
Birchwood park

September 9, 1975

Conciliation & Appeals Board
New York City Rent Stabilization Law 1969
666 Fifth Avenue
New York, New York 10019

Attn: Mr. Joseph B. Goldman

Re: Project No. 012-00901
Birchwood Towers
66-36 Yellowstone Blvd.
Forest Hills, New York

Dear Mr. Goldman:

Pursuant to the requirements of the Interim Rule Concerning Applicability Of Local Rent Control To F.H.A. Insured Projects, effective February 26, 1975, we hereby make demand upon you to issue the necessary orders from the Conciliation & Appeals Board to permit us to collect the F.H.A. allowable rent on the above mentioned premises.

The current allowable apartment rent roll on the above referenced property being collected by us in accordance with your regulations as of August 31, 1975 is \$1,091,525.00 annually which includes the superintendent's apartment.

The current F.H.A. allowable apartment rent roll is \$1,258,632.00 annually which includes the superintendent's apartment valued at \$9,624.00 annually.

Attached is a copy of our latest approved F.H.A. rent schedule and breakdown thereof.

We await your immediate concurrence.

Very truly yours,

BIRCHWOOD TOWERS #1 ASSOCIATES

JAL:jy
Enclosure

Jerrold A. Lieberman
Partner

BIRCHWOOD park

8a

September 9, 1975

Conciliation & Appeals Board
New York City Rent Stabilization Law 1969
666 Fifth Avenue
New York, New York

Attn: Mr. Joseph B. Goldman

Re: Project No. 012-00902
Birchwood Towers
102-30 66th Road
102-10 66th Road, Forest Hills

Dear Mr. Goldman:

Pursuant to the requirements of the Interim Rule Concerning Applicability of Local Rent Control To F.H.A. Insured Projects, effective February 26, 1975, we hereby make demand upon you to issue the necessary orders from the Conciliation & Appeals Board to permit us to collect the F.H.A. allowable rent on the above mentioned premises.

The current allowable apartment rent roll on the above referenced property being collected by us in accordance with your regulations as of August 31, 1975 is \$2,164,763.00 annually which includes the professional apartments and superintendent's apartments.

The current F.H.A. allowable apartment rent roll is \$2,536,482.00 annually which includes the professional apartments at a rental of \$19,962.00 annually, and the superintendent's apartments valued at \$12,408.00 annually

Attached is a copy of our latest approved F.H.A. rent schedule and breakdown thereof.

We await your immediate concurrence.

Very truly yours,

BIRCHWOOD TOWERS #2 ASSOCIATES

JAL:jy
Enclosure

Jerrold A. Lieberman
Partner

10 east jericho turnpike

mineola, n.y. 11504

(516) 747-7880

BIRCHWOOD park

9a

May 7, 1976

Mr. Thomas O'Callahan
FEDERAL HOUSING ADMINISTRATION
666 Fifth Avenue
New York, New York 10019

RE: BIRCHWOOD TOWERS #1 ASSOCIATES
66-36 Yellowstone Boulevard
Forest Hills, New York 11375
FHA Project No. 012-00901

Dear Mr. O'Callahan:

Pursuant to your recent directives, we hereby formally request that you issue Certificates of Preemption to the above referenced project. Much of the data relative to this project has been previously submitted to you along with the information submitted to you with our FHA project known as Gramercy Spire, (FHA Project No. 012-00380.) However, to review the status of this particular building, please be advised as follows.

In November of 1974, this project was submitted to the New York City Conciliation and Appeals Board of the Rent Stabilization Association, and was assigned Docket No. O-M 1145 (copy attached.) This application was submitted on the Hardship Regulations then in effect, and would have entitled us to an increase of approximately 19%. The Conciliation and Appeals Board has failed to take any action on this application in accordance with those rules. They have made an offer to process this application under the new so-called "3 + 3 Rule", which will result in a cash flow which is significantly less than that to which we are entitled, or an increase of only an estimated 2%.

The present FHA allowable rent for this project is \$104,084.00, month. The present collectable rent under the Rent Stabilization Association's regulations is only \$93,701.00, leaving a shortfall of \$10,383.00, month.

On July 3, 1975, the East New York Savings Bank declined to approve a request for a Waiver of Amortization. A recent discussion initiated with them, to renew our request was terminated upon the announcement of the Preemption regulations.

- Continued -

440 east jericho turnpike

new york, n.y. 11504

(516) 747-7880

BIRCHWOOD TOWERS #1 ASSOCIATES

10a

Mr. Thomas O'Callahan
FEDERAL HOUSING ADMINISTRATION

May 7, 1976
Page Two

Our last fiscal statement indicated a cash deficit of approximately \$19,400.00 per year.

Further, we anticipate a 5% increase in Con Edison electricity rates, going into effect, I believe on June 1, 1976, and a labor increase, since these employees are members of Union Local 32B of the Building Service Employees. There is also the possibility of the installation of window guards in any apartment in which there are children less than ten years old in occupancy. As you know, this ruling was recently mandated by the Board of Health, but its effective date has been postponed to October 1, 1976. Neither does this take into consideration the expenditure of approximately \$40,000.00 for the installation of an automatic wet pipe sprinkler system in the garage of these same premises (a problem which I have already discussed with you.)

According to the computations of this office, the Jeopardy Rent is \$102,844.00. Consequently, we have a shortfall of the Jeopardy Rent of approximately \$9,143.00, monthly.

Under these circumstances, and in accordance with your regulations for Preemption, it is perfectly clear that this project qualifies for Preemption. We submit for your approval, along with this letter, our proposed Jeopardy Rent Implementation Schedule for this project, in chart form. (Should you desire the schedule to be also provided to you in written form on 8-1/2" x 11" paper, this can be done early next week. Please advise us by telephone of your desires.) This proposed schedule will result in a gross annual, monthly apartment rent of \$102,813.00. We know of no reason why Certificates of Preemption should not be immediately issued relative to this project.

Very respectfully yours,

BIRCHWOOD TOWERS #1 ASSOCIATES

Jerrold A. Lieberman
Partner

JAL/gls

Enclosures

HAND DELIVERED

CC: Marvin Garfinkel, Esquire
440 East Lincoln Turnpike

Midwood, N.Y. 11501

(516) 747-7880

ESDP Birchwood park

May 11, 1976

Mr. Thomas O'Callahan
FEDERAL HOUSING ADMINISTRATION
666 Fifth Avenue
New York, New York 10019

RE: BIRCHWOOD TOWERS #2 ASSOCIATES
102-30 66th Road
102-10 66th Road
Forest Hills, New York 11375
FHA Project No. 012-00902

Dear Mr. O'Callahan:

Pursuant to your recent directives, we hereby formally request that you issue Certificates of Preemption to the above referenced project. Much of the data relative to this project has been previously submitted to you along with the information submitted to you with our FHA project known as Gramercy Spire, (FHA Project No. 012-00830). However, to review the status of this particular building, please be advised as follows.

In November of 1974, this project was submitted to the New York City Conciliation and Appeals Board of the Rent Stabilization Association, and was assigned Docket No. O-M 1144 (copy attached.) This application was submitted in accordance with the Hardship Regulations then in effect, and would have entitled us to an increase of approximately 22%. The Conciliation and Appeals Board has failed to take any action on this application in accordance with those rules. They have made an offer to process this application under the new so-called "3 + 3 Rule", which will result in a cash flow which is significantly less than that to which we are entitled, or an increase of only 2.7%.

The present FHA allowable rent for this project is \$208,676.00, monthly. The present collectable rent under the Rent Stabilization Association's regulations is only \$186,026.00, leaving a shortfall of \$22,650.00, monthly.

- Continued -

Oirchwood Park

12a

Mr. Thomas O'Callahan
FEDERAL HOUSING ADMINISTRATION

May 11, 1976
Page Two

On June 17, 1975, application was made to the New York Urban Servicing Company, Inc., agents for the John Hancock Insurance Company, requesting a Waiver of Amortization and Reserve For Replacement on this project. We were not even favored with the courtesy of a reply.

In February of 1976, after the exertion of strenuous pressure on the part of this office, and our insistence of a meeting in Boston, we received permission to meet. This meeting was then immediately cancelled by Boston, and instead we received a half-hearted request for updated 1975 figures, after which we were advised that the matter would be taken under "advisement". To date, no further answer has been received from the John Hancock Insurance Company.

Our last fiscal statement indicated a cash deficit of approximately \$16,450.00 per year.

Further, we anticipate a 5% increase in Con Edison electricity rates, going into effect, I believe on June 1, 1976, and a labor increase, since these employees are members of Union Local 32B of the Building Service Employees.

There is also the possibility of the installation of window guards in any apartment in which there are children less than ten years old in occupancy. As you know, this ruling was recently mandated by the Board of Health, but its effective date has been postponed to October 1, 1976. Neither does this take into consideration the expenditure of approximately \$75,000.00 for the installation of an automatic wet pipe sprinkler system in the garage of these same premises (a problem which I have already discussed with you.)

According to the computations of this office, the Jeopardy Rent is \$206,022.00, monthly. Consequently, we have a shortfall of the Jeopardy Rent of approximately \$19,996.00, monthly.

- Continued -

birchwood park

13a

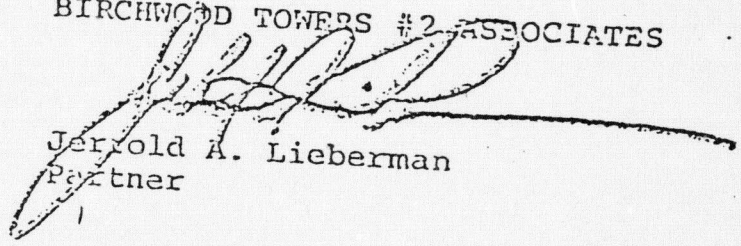
Mr. Thomas O'Callahan
FEDERAL HOUSING ADMINISTRATION

May 11, 1976
Page Three

Under these circumstances, and in accordance with your regulations for Preemption, it is perfectly clear that this project qualifies for Preemption. We submit for your approval, along with this letter, our proposed Jeopardy Rent Implementation Schedule for this project, in chart form. (Should you desire the schedule to be also provided to you in written form on 8-1/2" x 11" paper, this can be done early next week. Please advise us by telephone of your desires.) This proposed schedule will result in a gross annual, monthly apartment rent of \$205,980.00. We know of no reason why Certificates of Preemption should not be immediately issued relative to this project.

Very truly yours,

BIRCHWOOD TOWERS #2 ASSOCIATES


Jerrold A. Lieberman
Partner

JAL/gls

Enclosures

HAND DELIVERED

CC: Marvin Garfinkel, Esquire
2201 Packard Building
15th & Cherry Sts.
Philadelphia, Pa. 19102



14a

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410

September 1, 1976

OFFICE OF THE ASSISTANT SECRETARY FOR
HOUSING - FEDERAL HOUSING COMMISSIONER

IN REPLY REFER TO:

Mr. Jerrold A. Lieberman
Birchwood Towers Nos. 1 and 2
Associates
410 East Jericho Turnpike
Mineola, New York 11501

Dear Mr. Lieberman:

The Department of Housing and Urban Development has declared on this day that it has preempted the New York City Rent Stabilization Association from regulating rental at Birchwood Towers I and II, Project Nos. 012-00901 and 012-00902, on which this Department has insured the mortgagees against loss of approximately \$13,166,740.

It is this Department's policy generally not to interfere in the regulation, by local rent control authorities; however, HUD will assert exclusive jurisdiction over the regulation of the rents of such projects when the delay or decision of the local rent control authority jeopardizes the Department's economic interest in these projects.

However, preemption is subject to the projects fulfilling the following conditions:

1. The owner should prepare a schedule of implementation clearly identifying each apartment in the projects, and the shelter rentals to be charged necessary to bring the total rent potential up to jeopardy level.

2. The Department has preempted local rent control upon your agreement that paragraph 4 of the Regulatory Agreement is deemed to be amended to limit new leases to 2 years, except for tenants now in occupancy under 3-year leases which may renew for 3-years.
3. If a lease is drawn for more than one (1) year, the projects may have an escalator clause in the lease as follows: Rents will be increased when authorized by HUD to cover the cost of increased operating expenses and real estate taxes.
4. Tenants shall be advised that the project may apply for rental increases annually, which could increase amounts shown on the schedule of implementation.
5. If full implementation is not attainable in twelve (12) months under the above conditions, a multi-year schedule will be required.
6. The schedule will have to be posted for tenants' inspection and all tenants advised of its availability.
7. No deviation will be allowed from the schedule unless previously approved by HUD.
8. Here are the revised rents for each project and the rental schedules must so provide when submitted to HUD Area Office:

012-00901

\$99,747 per month for 242 shelter dwelling units. The 129 parking spaces may be rented for \$6,450 per month.

012-00902

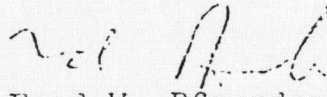
\$199,973 per month for 493 shelter dwelling units. The 242 parking spaces may be rented for \$12,100 per month. The three (3) professionals may be rented for \$450, \$500 and \$713.50 respectively each month, and an average monthly rental of \$300 for valet service basement space.

As soon as the schedule of implementation is approved by the New York Area Office, tenants may be notified of its effectiveness. Rental increases may be put into effect thirty (30) days after HUD approval.

The schedule of implementation is subject to whatever rights the respective tenants have under their current leases.

Pursuant to the foregoing, the Department has determined that the New York City Rent Control actions jeopardizes HUD's economic interest in Birchwood Towers Nos. I and II and accordingly, this Department hereby asserts exclusive jurisdiction over the rents of these projects.

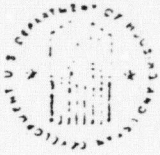
Sincerely,



Fred W. Pfaender

Director

Office of Loan Management



17a

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D. C. 20410

September 14, 1976

OFFICE OF THE ASSISTANT SECRETARY FOR
HOUSING-FEDERAL HOUSING COMMISSIONER

IN REPLY REFER TO:

Mr. Jerrold A. Lieberman
Birchwood Towers Nos. 1 and 2
Associates
410 East Jericho Turnpike
Mineola, New York 11501

Dear Mr. Lieberman:

This is a supplement to my letter of September 1, 1976, and the telephone conversation of September 10, 1976, between you and Mr. Wamsley of my staff concerning the preemption of the New York City Rent Stabilization Association for Birchwood Towers I and II, Project Nos. 012-00901 and 012-00902.

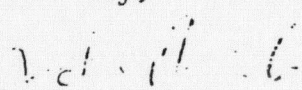
This letter will change item eight (8) for the shelter dwelling rent only on both projects:

012-00901 -- Change from \$99,747 to \$100,375

012-00902 -- Change from \$199,973 to \$201,232

The rest of our approval letter remains the same.

Sincerely,


Fred W. Pfaender
Director
Office of Loan Management

12501

BIRCHWOOD PARK

18a

September 16, 1976

Mr. Thomas O'Callahan
FEDERAL HOUSING ADMINISTRATION
666 Fifth Avenue
New York, New York 10019

RE: BIRCHWOOD TOWERS #1 ASSOCIATES
FHA Project No. 012-00901

Dear Mr. O'Callahan:

We are enclosing herewith, our proposed Jeopardy Rent Implementation Schedule for the above referenced project, Birchwood Towers #1. The Schedule is being presented to you in the desired form, i.e., typewritten apartment by apartment starting numerically with the first apartment on the first floor and proceeding numerically to the last apartment on the highest floor.

Bearing in mind your maximum permissible increase of 20% established by the New York Area Guidelines, you will find a number of apartments increased to the full 20%. On the other hand, the greater majority of the apartments have received no increase whatsoever. This has been done in order to more nearly equalize the rents being paid by all tenants within the building for equivalent accommodations.

As I am sure you realize, because of the imposition of Rent Stabilization Guidelines, the longer a tenant lives in the building, the lower is the rent he pays due to his artificially low, original base rental, as compared to the present fair market value of the apartment which is established by apartments currently offered for rent. In other words, where tenants have rented apartments and have been in occupancy for considerably shorter periods of time, they are paying much higher rent for the same accommodations.

There are a few instances where tenants have been increased some percentage which is not the maximum percentage. This is primarily due to situations where tenants renewed an apartment lease that would have originally been in the 20% category (lower base rental), but where the renewal took place under the Rent Stabilization Guidelines between the period May 1, 1976 and September 15, 1976, and consequently, were still paying a rent considerably below market levels.

- Continued -

410 East Jericho Turnpike

Mineola, N.Y. 11501

(516) 747-7880

our 28th year

Mr. Thomas O'Callahan
FEDERAL HOUSING ADMINISTRATION

September 16, 1976
Page Two

As pertains to garage rentals, prices to be charged for the space of each individual garage shall be raised as it expires and becomes due for renewal at a rate not to exceed \$50.00 per space, or \$ 6,450 per month.

The gross annual monthly rent roll for all of the apartments on the schedule, with the exception of superintendent and professionals is \$100,353.96. This represents a total gross proposed jeopardy rent roll of \$11.04 less than the jeopardy rent established by your office, of \$100,375.00.

Once you have had an opportunity to examine this schedule, I will be happy to meet with you to answer any questions you may have pertaining thereto. I am now firmly under the impression that once having submitted this schedule to you, there should be absolutely no reason why Certificates of Preemption should not be immediately forthcoming.

Very respectfully yours,

BIRCHWOOD TOWERS #1 ASSOCIATES

Jerrold A. Lieberman
Partner

JAL/gls

Encs.

CC: Marvin Garfinkel, Esquire
2201 Packard Building
15th & Cherry Sts.
Philadelphia, Pa.

HAND DELIVERED

September 16, 1976

Mr. Thomas O'Callahan
FEDERAL HOUSING ADMINISTRATION
666 Fifth Avenue
New York, New York 10019

RE: BIRCHWOOD TOWERS #2 ASSOCIATES
PHA Project No. 012-00902

Dear Mr. O'Callahan:

We are enclosing herewith, our proposed Jeopardy Rent Implementation Schedule for the above referenced project, Birchwood Towers #2 Associates. The Schedule is being presented to you in the desired form, i.e., typewritten apartment by apartment starting numerically with the first apartment on the first floor and proceeding numerically to the last apartment on the highest floor.

Bearing in mind your maximum permissible increase of 20% established by the New York Area Guidelines, there will be no apartment which will be increased more than 18%. On the other hand, the greater majority of the apartments have received no increase whatsoever. This has been done in order to more nearly equalize the rents being paid by all tenants within the building for equivalent accommodations.

As I am sure you realize, because of the imposition of Rent Stabilization Guidelines, the longer a tenant lives in the building, the lower is the rent he pays due to his artificially low, original base rental, as compared to the present fair market value of the apartment which is established by apartments currently offered for rent. In other words, where tenants have rented apartments and have been in occupancy for considerably shorter periods of time, they are paying much higher rent for the same accommodations.

There are a few instances where tenants have been increased some percentage which is not the maximum percentage. This is primarily due to situations where tenants renewed an apartment lease that would have originally been in the 18% category (lower base rental), but where the renewal took place under the Rent Stabilization Guidelines between the period May 1, 1976 and September 15, 1976, and consequently, were still paying a rent considerably below market levels.

- Continued -

Birchwood Park

21 a

Mr. Thomas O'Callahan
FEDERAL HOUSING ADMINISTRATION

September 16, 1976
Page Two

As pertains to garage rentals, prices to be charged for the space of each individual garage shall be raised as it expires and becomes due for renewal at a rate not to exceed \$50.00 per space, or \$12,100 per month.

The gross annual monthly rent roll for all of the apartments on the schedule, with the exception of superintendent and professionals is \$201,203.93. This represents a total gross proposed jeopardy rent roll of \$28.02 less than the jeopardy rent established by your office, of \$201,232.00.

Once you have had an opportunity to examine this schedule, I will be happy to meet with you to answer any questions you may have pertaining thereto. I am now firmly under the impression that once having submitted this schedule to you, there should be absolutely no reason why Certificates of Preemption should not be immediately forthcoming.

Very respectfully yours,

BIRCHWOOD TOWERS #2 ASSOCIATES

Jerrold A. Lieberman
Partner

JAL/gls

Encs.

CC: Marvin Garfinkel, Esquire
2201 Packard Building
15th & Cherry Sts.
Philadelphia, Pa.

HAND DELIVERED

BIRCHWOOD TOWERS #1 ASSOCIATES PROPOSED JEOPARDY RENT IMPLEMENTATION SCHEDULE

		<u>BELAIR</u>			
<u>APT. #</u>	<u>LEASE TERM</u>	<u>PRESENT RENT</u>	<u>PROPOSED RENT</u>	<u>% OF INCREASE</u>	
1B	5/01/75 - 4/30/78	\$370.35	\$444.40	20	
1C	4/01/76 - 3/31/78	279.00	334.80	20	
1D	5/01/75 - 4/30/77	450.00	540.00	20	
1G	11/01/73 - 10/31/76	228.60	274.32	20	
1H	7/01/76 - 6/30/77	346.50	378.00	9	
2B	2/01/76 - 6/30/78	329.44	395.30	20	
2C	7/01/76 - 6/30/78	306.63	330.00	8	
2D	11/15/74 - 11/30/76	466.52	559.82	20	
2F	10/01/76 - 12/31/76	490.00	521.85	7	
2G		335.00	335.00	0	
2H	4/01/76 - 3/31/78	354.25	354.25	0	22a
3A	ASST. SUPT.				
3B	8/01/76 - 7/31/77	455.00	455.00	0	
3C	12/01/75 - 11/30/77	309.00	309.00	0	
3D	9/01/76 - 8/31/79	501.03	541.66	8	
3E	11/01/73 - 10/31/76	329.95	395.94	20	
3F	7/01/76 - 12/31/76	477.30	516.00	8	
3G	10/01/74 - 9/30/77	526.90	632.28	20	
3H	5/01/76 - 4/30/79	403.22	403.22	0	
4A	11/01/73 - 10/31/76	227.44	272.90	20	
4B	11/01/73 - 10/31/76	316.19	379.40	20	
4C	8/01/76 - 4/30/77	335.00	335.00	0	
4D	5/01/76 - 4/30/77	476.62	515.27	8	
4E	1/01/76 - 12/31/77	415.00	415.00	0	
4F	11/01/75 - 10/31/78	504.89	504.89	0	
4G	(SEE 3G)				
4H	6/01/76 - 5/31/79	426.94	441.66	3	
4K	3/01/76 - 2/28/79	278.74	334.49	20	
5A	12/01/73 - 11/30/76	283.36	340.00	20	
5B	10/01/73 - 9/30/76	316.19	379.40	20	
5C	9/15/75 - 9/30/77	325.00	325.00	0	
5D	10/01/75 - 9/30/77	503.91	503.91	0	
5E	10/01/75 - 9/30/78	426.91	426.91	0	
5F	6/01/74 - 5/31/77	377.81	453.37	20	
5G	12/01/74 - 11/30/76	314.33	314.33	0	
5H	5/01/76 - 4/30/77	387.36	464.40	20	
...	...	...	...	20	

BIRCHWOOD TOWERS #1 ASSOCIATES PROPOSED JEOPARDY RENT IMPLEMENTATION SCHEDULE
PAGE 2

<u>APT. #</u>	<u>LEASE TERM</u>	<u>PRESENT RENT</u>	<u>PROPOSED RENT</u>	<u>% OF INCREASE</u>
6A		\$389.00		
6B	10/01/73 - 9/30/76	315.95	\$389.00	0
6C	10/01/75 - 9/30/78	230.14	379.10	20
6D	10/01/75 - 9/30/78	457.51	276.17	20
6E	9/01/76 - 8/31/78	425.00	549.00	20
6F	9/01/76 - 6/30/79	498.08	425.00	0
6G	6/01/75 - 5/31/77	300.94	522.00	5
6H	10/01/75 - 9/30/78	373.72	340.87	13
6K	11/01/74 - 10/31/77	299.00	448.46	20
7A		385.00	358.80	20
7B	4/01/75 - 3/31/78	409.91	385.00	0
7C	2/01/75 - 1/31/77	262.98	409.91	0
7D	4/01/75 - 3/31/77	455.40	315.58	20
7E	9/01/76 - 8/31/78	405.35	546.48	20
7F	3/01/75 - 2/28/77	467.25	405.35	0
7G	12/01/75 - 11/30/77	319.00	560.70	20
7H	1/15/76 - 1/31/78	429.00	319.00	0
7K	12/01/75 - 11/30/77	345.00	429.00	0
8A	5/01/76 - 4/30/78	379.00	345.00	0
8B	2/01/76 - 1/31/78	419.00	379.00	0
8C	10/01/74 - 9/30/77	264.85	419.00	0
8D	11/01/73 - 10/31/76	451.21	317.82	20
8E	9/01/75 - 8/31/78	432.86	541.45	20
8F	10/01/74 - 9/30/76	477.07	432.86	0
8G	7/01/76 - 12/31/76	259.13	572.00	20
8H	11/01/73 - 10/31/76	323.22	280.14	8
8K	11/01/73 - 10/31/76	307.90	387.86	20
9A	12/01/75 - 11/30/76	365.00	369.48	20
9B	7/15/75 - 7/31/77	390.00	365.00	0
9C		340.00	390.00	0
9D	8/01/76 - 7/31/78	522.00	340.00	0
9E	7/01/76 - 6/30/78	429.28	522.00	0
9F	5/01/75 - 4/30/78	458.52	429.28	0
9G	10/01/75 - 9/30/77	257.39	550.22	20
9H	8/01/75 - 7/31/77	415.00	308.87	20
9K	10/01/76 - 9/30/77	332.66	415.00	0
10A	10/01/76 - 9/30/77	349.86	354.28	7
10B	10/01/74 - 9/30/76	378.73	372.60	7
			454.40	20

23a

BIRCHWOOD TOWERS #1 ASSOCIATES PROPOSED JEOPARDY RENT IMPLEMENTATION SCHEDULE
PAGE 3

<u>APT. #</u>	<u>LEASE TERM</u>	<u>PRESENT RENT</u>	<u>PROPOSED RENT</u>	<u>% OF INCREASE</u>
10C	1/01/76 - 12/31/77	\$323.00	\$323.00	0
10D	8/01/76 - 7/31/78	529.00	529.00	0
10E	11/15/74 - 11/30/76	374.03	374.03	0
10F	9/01/76 - 6/30/77	558.45	558.45	0
10G	10/01/75 - 9/30/77	325.70	325.70	0
10H	10/01/75 - 9/30/78	369.75	443.70	20
10K	5/01/76 - 4/30/78	385.00	385.00	0
11A	10/01/76 - 9/30/78	262.39	305.68	17
11B	10/01-75 - 9/30/77	400.00	400.00	0
11C		349.00	349.00	0
11D	7/01/74 - 6/30/77	404.10	484.92	20
11E	10/01/75 - 9/30/78	379.49	379.49	0
11F	11/01/75 - 10/31/78	535.17	535.17	0
11G	12/01/73 - 11/30/76	276.70	332.04	20
11H	11/01/75 - 10/31/77	433.00	433.00	0
11K	5/01/76 - 4/30/78	355.11	355.11	0
12A	12/01/75 - 11/30/77	349.75	349.75	0
12B	10/20/74 - 10/31/76	357.72	429.25	20
12C	10/01/74 - 9/30/76	289.07	346.88	20
12D	6/01/75 - 5/31/77	487.46	487.46	0
12E	12/01/74 - 11/30/79	403.48	403.48	0
12F	7/01/76 - 6/30/79	509.53	534.00	5
12G	12/01/74 - 11/30/76	252.11	302.53	20
12H	6/01/76 - 5/31/79	414.24	428.52	3
12K	9/01/75 - 8/31/78	301.97	362.36	20
14A	11/01/75 - 10/31/78	395.00	395.00	0
14B	8/01/76 - 7/31/78	433.15	433.15	0
14C	10/01/74 - 9/30/76	289.00	346.80	20
14D	5/01/76 - 4/30/77	533.37	533.37	0
14E	5/01/75 - 4/30/77	400.00	400.00	0
14F	8/10/75 - 8/31/77	546.22	546.22	0
14G	2/01/75 - 1/31/77	273.92	328.70	20
14H	11/01/75 - 10/31/77	435.15	435.15	0
14K	10/01/75 - 9/30/78	320.03	384.04	20

BIRCHWOOD TOWERS #1 ASSOCIATES PROPOSED JEOPARDY RENT IMPLEMENTATION SCHEDULE
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<u>APT. #</u>	<u>LEASE TERM</u>	<u>PRESENT RENT</u>	<u>PROPOSED RENT</u>	<u>% OF INCREASE</u>
15A	5/01/76 - 4/30/78	\$378.92	\$378.92	0
15B	7/01/75 - 6/30/78	380.28	456.30	20
15C	4/15/75 - 4/30/77	328.93	328.93	0
15D	12/01/75 - 11/30/78	527.74	527.74	0
15E	10/01/76 - 9/30/79	364.22	417.03	16
15F	7/01/76 - 6/30/78	535.00	535.00	0
15G	4/01/76 - 7/31/77	323.47	323.47	0
15H	1/01/76 - 12/31/76	431.24	431.24	0
15K	12/01/75 - 11/30/76	375.00	375.00	0
16A	11/01/75 - 10/31/77	338.00	338.00	0
16B	9/01/76 - 8/31/77	466.47	466.47	0
16C	12/01/74 - 11/30/76	314.19	314.19	0
16D	12/01/75 - 11/30/78	573.10	573.10	0
16E	10/01/75 - 9/30/78	385.06	385.06	0
16F	7/01/76 - 6/30/79	486.26	509.62	5
16G	9/01/76 - 8/31/78	300.00	300.00	0
16H	11/15/75 - 11/30/77	435.22	435.22	0
16K	11/15/73 - 11/30/75	380.00	380.00	0
17A	5/01/76 - 4/30/77	388.00	388.00	0
17B	8/01/75 - 7/31/77	425.00	425.00	0
17C	11/03/74 - 11/30/76	281.98	338.38	20
17D	3/01/76 - 2/28/78	535.00	535.00	0
17E	10/01/75 - 9/30/77	417.35	417.35	0
17F	10/01/76 - 9/30/79	522.02	579.44	11
17G	5/01/74 - 4/30/77	209.49	251.39	20
17H	11/01/75 - 10/31/77	410.92	410.92	0
17K		388.00	388.00	0
18A	11/15/75 - 11/30/77	345.60	345.60	0
18B	SUPERINTENDENT			
18C	3/01/76 - 2/28/78	335.00	335.00	0
18D		555.00	555.00	0
18E	11/01/75 - 10/31/78	395.47	395.47	0
18F	8/01/76 - 7/31/79	538.15	538.15	0
18G	4/15/75 - 4/30/77	314.90	314.90	0
18H	10/01/76 - 9/30/78	450.00	450.00	0
18K	11/01/75 - 10/31/78	316.62	379.94	20

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BIRCHWOOD TOWERS #1 ASSOCIATES PROPOSED JEOPARDY RENT IMPLEMENTATION SCHEDULE
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<u>APT. #</u>	<u>LEASE TERM</u>	<u>PRESENT RENT</u>	<u>PROPOSED RENT</u>	<u>% OF INCREASE</u>
19A	7/01/75 - 6/30/77	\$340.90	\$340.90	0
19B	6/01/76 - 5/31/78	443.00	443.00	0
19C	12/01/73 - 11/30/76	236.56	283.87	20
19D	8/01/76 - 7/31/78	550.00	550.00	0
19E	2/01/76 - 1/31/79	435.00	435.00	0
19F	11/01/73 - 10/31/76	427.61	513.13	20
19G	8/01/76 - 10/31/76	330.54	330.54	0
19H	6/01/75 - 5/31/77	398.85	398.85	0
19K	10/01/73 - 9/30/76	271.64	325.97	20
20A	1/01/75 - 12/31/76	370.05	370.05	0
20B	7/01/75 - 6/30/78	387.33	387.33	0
20C	11/01/73 - 10/31/76	276.11	331.33	20
20D	12/01/75 - 11/30/77	675.00	675.00	0
20E	7/01/76 - 9/30/76	316.35	316.35	0
20F		555.00	555.00	0
20G		339.00	339.00	0
20H	11/01/75 - 10/31/77	450.37	450.37	0
20K		385.00	385.00	0
21A	4/01/76 - 3/31/78	385.00	385.00	0
21B	5/01/76 - 4/30/78	435.00	435.00	0
21C	8/01/76 - 10/31/76	334.72	334.72	0
21D	4/01/75 - 3/31/77	569.03	682.84	20
21E	8/15/74 - 8/31/76	296.46	296.46	0
21F	2/01/74 - 1/31/77	493.71	493.71	0
21G	10/15/76 - 10/31/78	306.71	339.00	11
21H	4/01/75 - 3/31/78	435.00	435.00	0
21K	8/01/76 - 7/31/78	379.00	379.00	0
22A	8/01/76 - 7/31/78	385.00	385.00	0
22B	10/01/75 - 9/30/78	417.28	417.28	0
22C	10/01/75 - 9/30/77	325.00	325.00	0
22D	7/01/76 - 6/30/77	700.00	700.00	0
22E	12/01/75 - 11/30/77	336.00	336.00	0
22F	6/01/76 - 5/31/77	522.02	564.35	8
22G		339.00	339.00	0
22H	5/01/76 - 2/28/77	431.75	431.75	0
22K	8/01/75 - 7/31/77	362.00	362.00	0

BIRCHWOOD TOWERS #1 ASSOCIATES PROPOSED JEOPARDY RENT IMPLEMENTATION SCHEDULE
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<u>APT. #</u>	<u>LEASE TERM</u>	<u>PRESENT RENT</u>	<u>PROPOSED RENT</u>	<u>% OF INCREASE</u>
23A	7/01/76 - 6/30/77	\$385.00	\$385.00	0
23B	6/01/76 - 10/31/76	448.76	448.76	0
23C	7/01/74 - 6/30/77	288.71	346.45	20
23D	9/01/76 - 4/30/77	725.00	725.00	0
23E	10/01/76 - 11/30/76	305.38	325.23	7
23F	9/01/76 - 8/31/77	564.45	564.45	0
23G	1/01/75 - 12/31/76	257.19	308.63	20
23H	5/01/75 - 4/30/78	464.40	464.40	0
23K	8/01/75 - 7/31/77	365.00	365.00	0
24A	8/01/75 - 7/31/77	360.00	360.00	0
24B	6/15/75 - 6/30/77	414.00	414.00	0
24C	2/15/75 - 2/28/77	314.20	314.20	0
24D	4/01/76 - 3/31/78	648.39	648.39	0
24E	3/01/76 - 2/28/78	323.47	323.47	0
24F	6/01/76 - 5/31/78	542.00	542.00	0
24G	3/01/75 - 2/28/78	287.36	344.83	20
24H	11/01/75 - 10/31/77	425.00	425.00	0
24K	9/01/76 - 9/30/76	370.83	370.83	0
25A	12/01/75 - 11/30/78	324.79	389.75	20
25B	5/01/76 - 4/30/78	456.33	456.33	0
25C	10/01/76 - 9/30/78	301.84	325.99	8
25D	9/01/75 - 8/31/77	685.22	685.22	0
25E	6/15/76 - 6/30/78	336.00	336.00	0
25F	1/15/75 - 1/31/77	511.48	511.48	0
25G	9/01/76 - 8/31/78	251.94	279.94	11
25H	9/01/76 - 8/31/78	440.45	440.45	0
25K	11/15/74 - 11/30/76	364.00	364.00	0
26A	11/01/76 - 10/31/78	364.00	393.12	8
26B	8/01/76 - 7/31/78	373.36	414.80	11
26C	12/01/75 - 11/30/77	337.00	337.00	0
26D		669.00	669.00	0
26E	3/01/75 - 2/28/77	327.00	327.00	0
26F	9/01/75 - 8/31/77	555.00	555.00	0
26G	11/01/76 - 10/31/78	314.33	339.48	8
26H	10/01/76 - 9/30/78	450.00	450.00	0
26K	6/01/75 - 5/31/77	370.00	370.00	0

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BIRCHWOOD TOWERS #1 ASSOCIATES PROPOSED JEOPARDY RENT IMPLEMENTATION SCHEDULE
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<u>APT. #</u>	<u>LEASE TERM</u>	<u>PRESENT RENT</u>	<u>PROPOSED RENT</u>	<u>% OF INCREASE</u>
27A	1/01/76 - 10/31/76	\$362.02	\$362.02	0
27B	6/01/76 - 5/31/78	450.00	450.00	0
27C	9/01/75 - 8/31/77	317.95	317.95	0
27D	4/01/75 - 3/31/78	655.40	655.40	0
27E	5/01/76 - 6/30/77	306.60	306.60	0
27F	11/01/76 - 10/31/78	502.18	542.35	8
27G	8/01/75 - 7/31/77	316.55	316.55	0
27H	9/01/75 - 8/31/77	438.16	438.16	0
27K	1/01/76 - 12/31/77	370.93	370.93	0
28A	4/01/75 - 3/31/78	376.22	376.22	0
28E	9/01/76 - 8/31/78	450.00	450.00	0
28C	9/01/76 - 8/31/78	292.84	325.30	11
28D	9/01/75 - 8/31/77	690.00	690.00	0
28E	5/01/76 - 4/30/79	305.97	305.97	0
28F	10/01/73 - 9/30/76	435.03	522.04	20
28G		339.00	339.00	0
28H	7/01/76 - 6/30/78	455.00	455.00	0
28K	5/01/76 - 4/30/78	361.60	361.60	0
29A	6/01/74 - 5/31/77	268.15	321.75	20
29B	6/01/76 - 5/31/78	450.00	450.00	0
29C		354.00	354.00	0
29D	9/15/76 - 9/30/78	670.00	670.00	0
29E	2/01/76 - 1/31/79	294.91	294.91	0
29F		573.00	573.00	0
29G	9/15/75 - 9/30/77	339.00	339.00	0
29H	5/01/76 - 4/30/78	450.00	450.00	0
29K	2/01/76 - 1/31/78	385.00	385.00	0

WHERE APPLICABLE, GARAGE RENTALS WILL BE RAISED TO A MAXIMUM OF \$50.00 PER SPACE AS LEASES EXPIRE

BIRCHWOOD TOWERS #2 ASSOCIATES PROPOSED JEOPARDY RENT IMPLEMENTATION SCHEDULE

TOLEDO

<u>APT. #</u>	<u>LEASE TERM</u>	<u>PRESENT RENT</u>	<u>PROPOSED RENT</u>	<u>% OF INCREASE</u>
6A	1/01/76 - 12/31/77	\$280.40	\$330.00	18
6B	1/01/75 - 9/30/76	414.33	414.33	0
6C	3/01/76 - 2/28/79	298.78	298.78	0
6D		546.00	546.00	0
6E	10/01/75 - 9/30/78	432.42	432.42	0
6F	1/01/74 - 12/31/76	450.52	531.00	18
6G	9/01/76 - 8/31/78	278.79	304.00	9
6H	6/01/76 - 5/31/78	450.00	450.00	0
6K	1/01/74 - 12/31/76	255.67	301.00	18
7A	1/01/74 - 12/31/76	266.78	314.00	18
7B	1/01/74 - 12/31/76	318.04	375.00	18
7C	3/01/74 - 2/28/77	234.38	276.00	18
7D	2/01/74 - 1/31/77	376.59	444.00	18
7E	7/01/75 - 6/30/77	417.00	417.00	0
7F	1/01/76 - 12/31/78	549.38	549.38	0
7G	3/01/76 - 2/28/78	329.00	329.00	0
7H	8/15/75 - 8/31/77	425.00	425.00	0
7K	1/01/74 - 12/31/76	266.77	314.00	18
8A	1/01/74 - 12/31/76	264.41	312.00	18
8B	1/01/74 - 12/31/76	328.03	387.00	18
8C	5/01/75 - 4/30/78	317.12	317.12	0
8D	1/01/76 - 12/31/76	500.69	500.69	0
8E	1/01/74 - 12/31/76	333.13	393.00	18
8F	6/10/75 - 6/30/77	510.00	510.00	0
8G	9/01/76 - 8/31/79	339.41	339.41	0
8H	8/15/75 - 8/31/77	385.60	385.60	0
8K	7/01/75 - 6/30/77	358.61	358.61	0
9A	6/01/76 - 5/31/78	380.00	380.00	0
9B	1/01/74 - 12/31/76	324.32	382.00	18
9C	9/01/76 - 8/31/77	340.00	340.00	0
9D		549.00	549.00	0
9E	2/01/76 - 1/31/79	432.42	432.42	0
9F	7/01/75 - 6/30/77	504.60	504.60	0
9G	1/01/74 - 12/31/76	230.52	272.00	18
9H	6/01/75 - 5/31/77	418.10	418.10	0
9K	8/01/75 - 7/31/77	361.22	361.22	0

BIRCHWOOD TOWERS #2 ASSOCIATES PROPOSED JEOPARDY RENT IMPLEMENTATION SCHEDULE

TOLEDO

<u>APT. #</u>	<u>LEASE TERM</u>	<u>PRESENT RENT</u>	<u>PROPOSED RENT</u>	<u>% OF INCREASE</u>
10A	9/01/76 - 8/31/77	\$307.19	\$329.00	7
10B	12/01/75 - 11/30/78	366.25	432.00	18
10C	12/01/73 - 11/30/76	228.21	270.00	18
10D	10/01/76 - 9/30/78	448.93	531.00	18
10E	4/01/74 - 3/31/77	348.24	410.00	18
10F	5/15/76 - 5/31/78	539.00	539.00	0
10G	12/01/73 - 11/30/76	230.52	272.00	18
10H	1/01/74 - 12/31/76	322.96	381.00	18
10K	7/01/75 - 6/30/78	335.65	396.00	18
11A	1/01/74 - 12/31/76	263.68	311.00	18
11B	3/01/76 - 2/28/79	456.12	456.12	0
11C	2/01/75 - 1/31/78	306.81	306.81	0
11D		553.00	553.00	0
11E	4/01/74 - 3/31/77	350.98	414.00	18
11F	2/01/76 - 1/31/77	527.15	527.15	0
11G	1/01/76 - 12/31/78	260.57	307.00	18
11H	12/01/74 - 11/30/76	359.97	424.00	18
11K	5/01/75 - 4/30/78	381.72	381.72	0
12A	11/01/75 - 10/31/78	337.29	398.00	18
12B	2/01/74 - 1/31/77	392.48	392.48	0
12C	6/01/76 - 5/31/78	349.00	349.00	0
12D	8/01/76 - 7/31/78	540.00	540.00	0
12E	7/01/76 - 6/30/77	423.50	423.50	0
12F	5/01/76 - 1/31/77	502.76	502.76	0
12G	6/01/76 - 5/31/77	334.43	334.43	0
12H	4/01/75 - 3/31/77	379.00	447.00	18
12K	1/01/74 - 12/31/76	271.20	320.00	18
14A	4/01/76 - 3/31/78	343.00	343.00	0
14B	2/01/75 - 1/31/77	384.41	384.41	0
14C	1/01/76 - 12/31/78	264.20	311.00	18
14D	5/01/76 - 4/30/78	546.90	546.90	0
14E	8/01/76 - 7/31/78	435.00	435.00	0
14F	8/01/74 - 7/31/77	470.58	555.00	18
14G	2/15/76 - 2/28/78	329.00	329.00	0
14H	1/01/74 - 12/31/76	332.94	392.00	18
14K	10/01/76 - 9/30/78	375.00	390.00	4

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BIRCHWOOD TOWERS #2 ASSOCIATES PROPOSED JEOPARDY RENT IMPLEMENTATION SCHEDULE

TOLEDO

<u>APT. #</u>	<u>LEASE TERM</u>	<u>PRESENT RENT</u>	<u>PROPOSED RENT</u>	<u>% OF INCREASE</u>
15A	8/01/76 - 10/31/76	\$398.00	\$398.00	0
15B	12/01/73 - 11/30/76	344.69	406.00	18
15C	3/01/76 - 2/28/79	305.22	305.22	0
15D	7/01/76 - 6/30/79	532.08	548.00	3
15E	10/01/76 - 9/30/78	429.00	435.00	1
15F		559.00	559.00	0
15G	4/01/76 - 3/31/77	335.00	335.00	0
15H	6/01/75 - 5/31/77	431.30	431.30	0
15K	12/01/76 - 11/30/78	344.98	344.98	0
16A	5/01/76 - 10/31/76	368.54	368.54	0
16B	7/01/76 - 6/30/78	460.00	460.00	0
16C	9/01/76 - 8/31/78	355.00	355.00	0
16D	1/01/74 - 12/31/76	415.31	490.00	18
16E	1/01/75 - 12/31/76	403.60	403.60	0
16F	6/01/74 - 5/31/77	425.87	502.00	18
→ 16G	12/15/74 - 12/31/76	319.75	319.75	0
16H	5/01/76 - 10/31/76	439.85	439.85	0
16K	9/15/75 - 9/30/77	375.00	375.00	0
17A	11/01/75 - 10/31/77	375.00	375.00	0
17B	11/01/73 - 10/31/76	333.58	393.00	18
17C	1/01/75 - 12/31/76	319.60	319.60	0
17D	2/01/76 - 1/31/77	549.45	549.45	0
17E	12/01/73 - 11/30/76	400.32	400.32	0
17F	2/01/74 - 1/31/77	472.30	557.00	18
17G	8/05/75 - 8/31/77	308.92	308.92	0
17H	10/15/75 - 10/31/77	390.27	390.27	0
17K	7/01/76 - 6/30/77	405.90	405.90	0
18A	1/01/74 - 12/31/76	279.21	329.00	18
18B	8/01/76 - 7/31/78	460.00	460.00	0
18C	3/01/75 - 2/28/78	291.58	344.00	18
18D	7/01/76 - 6/30/77	582.47	582.47	0
18E	10/01/75 - 9/30/77	415.00	415.00	0
18F	8/10/75 - 7/31/77	550.00	550.00	0
18G	2/01/75 - 1/31/77	314.65	314.65	0
18H	5/01/74 - 4/30/77	373.48	440.00	18
18K	5/01/74 - 4/30/77	329.26	388.00	18

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BIRCHWOOD TOWERS #2 ASSOCIATES PROPOSED JEOPARDY RENT IMPLEMENTATION SCHEDULE

TOLEDO

<u>APT. #</u>	<u>LEASE TERM</u>	<u>PRESENT RENT</u>	<u>PROPOSED RENT</u>	<u>% OF INCREASE</u>
19A	1/01/74 - 12/31/76	\$301.21		
19B	8/01/75 - 7/31/77	421.24	\$355.00	18
19C	1/01/74 - 12/31/76	242.67	421.24	0
19D	6/01/74 - 5/31/77	429.57	286.00	18
19E	1/01/75 - 12/31/77	382.65	507.00	18
19F	9/01/76 - 8/31/78	550.00	382.65	0
19G	7/01/76 - 6/30/78	340.08	550.00	0
19H	6/01/76 - 5/31/79	455.27	340.08	0
19K	7/01/74 - 6/30/77	322.72	455.27	0
20A	11/01/76 - 10/31/78	349.53	380.00	18
20B	6/01/76 - 5/31/78	450.09	380.00	9
20C	5/01/76 - 4/30/78	331.00	450.09	0
20D	2/01/76 - 1/31/78	555.00	331.00	0
20E	1/01/74 - 12/31/76	346.69	555.00	0
20F	6/01/76 - 5/31/77	510.14	409.00	18
20G		340.00	542.00	6
20H	8/01/76 - 7/31/79	455.71	340.00	0
20K	3/01/75 - 2/28/77	383.75	455.71	0
21A	4/01/76 - 3/31/79	407.00	383.75	0
21B	4/01/74 - 3/31/77	352.05	407.00	0
21C	7/15/75 - 7/31/77	324.60	415.00	18
21D	6/01/76 - 5/31/78	676.36	324.60	0
21E	2/01/76 - 1/31/77	317.43	676.36	0
21F	8/01/76 - 7/31/78	550.00	317.43	0
21G	12/01/75 - 11/30/76	335.00	550.00	0
21H	6/01/76 - 5/31/77	442.12	335.00	0
21K	1/01/74 - 12/31/76	276.01	442.12	0
22A	7/01/76 - 6/30/79	389.30	325.00	18
22B	8/01/76 - 7/31/78	457.15	389.30	0
22C	9/01/76 - 8/31/78	308.00	457.15	0
22D	12/01/74 - 11/30/77	631.48	308.00	0
22E	6/01/74 - 5/31/77	281.65	631.48	0
22F	1/01/75 - 12/31/76	509.96	332.00	18
22G	7/01/76 - 6/30/78	345.00	509.96	0
22H	6/01/76 - 5/31/78	450.00	345.00	0
22K	9/01/75 - 8/31/77	379.00	450.00	0
			379.00	0

BIRCHWOOD TOWERS #2 ASSOCIATES PROPOSED JEOPARDY RENT IMPLEMENTATION SCHEDULE

TOLEDO

<u>APT. #</u>	<u>LEASE TERM</u>	<u>PRESENT RENT</u>	<u>PROPOSED RENT</u>	<u>% OF INCREASE</u>
23A	2/01/75 - 1/31/78	\$331.36		
23B	5/01/76 - 4/30/77	460.00	\$391.00	18
23C	10/01/75 - 9/30/77	325.00	460.00	0
23D	8/01/75 - 7/31/77	670.00	325.00	0
23E	8/15/75 - 8/31/77	320.00	670.00	0
23F	1/01/74 - 12/31/76	429.57	320.00	0
23G	10/01/76 - 9/30/78	309.58	506.00	18
23H	7/01/75 - 12/31/76	351.44	329.00	6
23K	1/01/75 - 12/31/77	308.66	414.00	18
24A	4/01/76 - 3/31/78	385.00	364.00	18
24B	10/01/76 - 9/30/78	396.00	385.00	0
24C	5/01/75 - 4/30/77	325.00	422.00	7
24D	1/01/75 - 12/31/78	695.00	325.00	0
24E	3/01/76 - 2/28/78	345.00	695.00	0
24F	1/01/74 - 12/31/76	430.18	345.00	0
24G	10/01/76 - 9/30/79	309.50	507.00	18
24H	3/01/76 - 2/28/79	393.97	338.00	9
24K		398.00	393.97	0
25A	1/01/74 - 12/31/76	287.73	398.00	0
25B	2/01/74 - 1/31/77	351.46	339.00	18
25C	3/01/74 - 2/28/77	269.76	414.00	18
25D	9/01/76 - 8/31/78	670.00	318.00	18
25E	11/01/76 - 10/31/78	328.76	670.00	0
25F	2/01/75 - 1/31/78	508.24	350.00	6
25G	1/01/74 - 12/31/76	254.26	508.24	0
25H	10/01/75 - 9/30/77	461.00	300.00	18
25K	10/01/75 - 9/30/77	403.93	461.00	0
26A	1/01/74 - 12/31/76	282.17	403.93	0
26B	2/15/75 - 2/28/77	390.81	333.00	18
26C	10/01/76 - 9/30/78	349.00	390.81	0
26D	1/01/76 - 12/31/76	686.22	349.00	0
26E	4/01/76 - 3/31/77	336.45	686.22	0
26F	7/01/74 - 6/30/77	450.16	336.45	0
26G	2/01/75 - 1/31/78	290.44	531.00	18
26H	1/01/74 - 12/31/76	360.68	342.00	18
26K	10/01/76 - 9/30/78	360.00	425.00	18
			390.00	8

BIRCHWOOD TOWERS #2 ASSOCIATES PROPOSED JEOPARDY RENT IMPLEMENTATION SCHEDULE

TOLEDO

<u>APT. #</u>	<u>LEASE TERM</u>	<u>PRESENT RENT</u>	<u>PROPOSED RENT</u>	<u>% OF INCREASE</u>
27A	3/01/75 - 2/28/78	\$364.87	\$364.87	0
27B	12/01/74 - 11/30/76	410.30	410.30	0
27C	8/01/76 - 7/31/78	345.65	345.65	0
27D	7/01/75 - 6/30/77	665.00	665.00	0
27E	9/01/76 - 8/31/77	340.31	340.31	0
27F	5/01/75 - 4/30/77	535.72	535.72	0
27G	7/01/74 - 6/30/77	318.38	318.38	0
27H	1/01/74 - 12/31/76	352.68	416.00	18
27K	3/01/76 - 2/28/79	373.16	373.16	0
28A	2/15/76 - 2/28/78	381.60	381.60	0
28B	5/01/76 - 4/30/79	442.45	442.45	0
28C	7/01/76 - 6/30/77	352.00	352.00	0
28D	10/01/76 - 9/30/78	647.99	678.00	5
28E	9/15/75 - 9/30/77	335.00	335.00	0
28F	9/01/76 - 8/31/78	565.00	565.00	0
28G	7/01/74 - 6/30/77	311.63	311.63	0
28H	9/01/75 - 8/31/77	425.00	425.00	0
28K	2/01/75 - 1/31/77	285.25	336.00	18
29A	1/01/75 - 12/31/76	342.67	404.00	18
29B	6/01/76 - 5/31/78	478.94	478.94	0
29C		345.00	345.00	0
29D		690.00	690.00	0
29E	7/01/75 - 6/30/78	308.32	308.32	0
29F	10/01/75 - 9/30/77	568.65	568.65	0
29G	11/01/75 - 10/31/77	335.00	335.00	0
29H	7/01/76 - 6/30/78	457.15	457.15	0
29K	12/01/75 - 11/30/77	375.00	375.00	0
30A	2/01/74 - 1/31/77	288.81	340.00	18
30B	11/01/75 - 10/31/77	447.62	447.62	0
30C	7/15/75 - 7/31/77	345.00	345.00	0
30D	6/01/75 - 5/31/77	683.88	683.88	0
30E	8/01/76 - 7/31/78	340.08	340.08	0
30F	9/01/76 - 8/31/78	565.00	565.00	0
30G	1/01/74 - 12/31/76	241.10	284.00	18
30H		470.00	470.00	0
30K	5/01/74 - 4/30/77	261.70	308.00	18

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WHERE APPLICABLE, GARAGE RENTALS WILL BE RAISED TO

BIRCHWOOD TOWERS #2 ASSOCIATES PROPOSED JEOPARDY RENT IMPLEMENTATION SCHEDULE

<u>APT. #</u>	<u>LEASE TERM</u>	<u>KYOTO PRESENT RENT</u>	<u>PROPOSED RENT</u>	<u>% OF INCREASE</u>
1C	9/10/74 - 9/30/76	\$289.28	\$341.00	18
1H	7/01/76 - 6/30/78	500.00	500.00	0
2A	1/01/74 - 12/31/76	297.65	351.00	18
2B	8/01/76 - 8/31/78	429.00	429.00	0
2C	12/01/75 - 11/30/78	261.39	308.00	18
2D	9/01/75 - 8/31/78	499.17	499.17	0
2F	12/01/74 - 11/30/76	477.93	477.93	0
2G	4/01/76 - 3/31/79	331.73	331.73	0
2H	1/01/76 - 12/31/76	383.55	452.00	18
3A	2/01/74 - 1/31/77	256.91	303.00	18
3B	2/01/74 - 1/31/77	321.25	379.00	18
3C	10/01/74 - 9/30/76	304.48	304.48	0
3D	3/15/76 - 3/31/78	525.00	525.00	0
3E	2/01/74 - 1/31/77	328.81	388.00	18
3F	4/01/75 - 3/31/78	459.60	542.00	18
3G	10/01/76 - 9/30/78	239.34	278.85	17
3H	2/01/74 - 1/31/77	323.07	381.00	18
3K	12/01/73 - 11/30/76	263.08	310.00	18
4A	11/01/73 - 10/31/76	264.31	311.00	18
4B	11/01/73 - 10/31/76	333.58	393.00	18
4C		339.00	339.00	0
4D	1/01/76 - 12/31/77	519.00	519.00	0
4E	11/01/73 - 10/31/76	331.06	390.00	18
4F	12/01/73 - 11/30/76	406.76	479.00	18
4G	6/15/75 - 6/30/77	255.76	301.00	18
4H	1/01/74 - 12/31/76	336.02	396.00	18
4K	11/01/73 - 10/31/76	260.10	306.00	18
5A	2/01/76 - 1/31/78	314.65	371.00	18
5B	11/01/76 - 10/31/78	450.11	490.00	9
5C	9/01/75 - 8/31/77	312.00	312.00	0
5D	12/01/73 - 11/30/76	413.58	488.00	18
5E	12/01/73 - 11/30/76	330.66	390.00	18
5F	SUPERINTENDENT			
5G	11/01/75 - 10/31/78	261.39	308.44	18
5H	7/01/76 - 6/30/78	419.65	419.65	0
5K	9/01/75 - 8/31/78	396.00	396.00	0

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BIRCHWOOD TOWERS #2 ASSOCIATES PROPOSED JEOPARDY RENT IMPLEMENTATION SCHEDULE

KYOTO

<u>APT. #</u>	<u>LEASE TERM</u>	<u>PRESENT RENT</u>	<u>PROPOSED RENT</u>	<u>% OF INCREASE</u>
6A	10/01/75 - 9/30/78	\$327.03	\$385.00	18
6B	6/01/75 - 5/31/78	421.65	421.65	0
6C	12/15/75 - 12/31/77	288.73	340.00	18
6D	10/01/75 - 9/30/77	462.24	545.00	18
6E	6/01/74 - 5/31/77	393.55	393.55	0
6F	10/01/75 - 9/30/78	509.42	509.42	0
6G	4/01/76 - 3/31/78	293.59	346.00	18
6H	3/01/74 - 2/28/77	374.79	442.00	18
6K	12/01/75 - 11/30/78	371.33	371.33	0
7A	12/01/73 - 11/30/76	276.89	326.00	18
7B	7/01/75 - 6/30/77	394.50	394.50	0
7C	5/15/75 - 5/31/77	295.38	348.00	18
7D	11/01/73 - 10/31/76	406.07	479.00	18
7E	12/01/74 - 11/30/76	340.81	402.00	18
7F	5/01/76 - 4/30/78	507.80	507.80	0
7G	12/01/73 - 11/30/76	231.75	274.00	18
7H	12/01/73 - 11/30/76	321.74	379.00	18
7K	7/01/76 - 6/30/78	385.00	385.00	0
8A	11/01/75 - 10/31/78	305.30	360.00	18
8B	1/01/74 - 12/31/77	365.63	431.00	18
8C	11/01/75 - 10/31/77	330.00	330.00	0
8D	12/01/73 - 11/30/76	407.92	481.00	18
8E	12/01/75 - 11/30/78	412.98	412.98	0
8F	6/15/75 - 6/30/77	458.12	540.00	18
8G	9/01/76 - 8/31/78	329.40	329.40	0
8H	11/01/73 - 10/31/76	316.19	373.00	18
8K	3/01/76 - 2/28/78	390.00	390.00	0
9A	12/01/75 - 11/30/78	264.39	311.00	18
9B	9/01/75 - 8/31/77	465.22	465.22	0
9C	11/01/75 - 10/31/78	239.63	282.00	18
9D	12/01/73 - 11/30/76	410.99	484.00	18
9E	10/01/76 - 9/30/77	378.57	398.00	5
9F	11/01/75 - 10/31/77	565.00	565.00	0
9G	12/01/75 - 11/30/78	239.55	283.00	18
9H	10/01/75 - 9/30/78	449.00	449.00	0
9K	11/15/74 - 11/30/76	294.66	347.00	18

BIRCHWOOD TOWERS #2 ASSOCIATES PROPOSED JEOPARDY RENT IMPLEMENTATION SCHEDULE

<u>'APT. #</u>	<u>LEASE TERM</u>	<u>KYOTO PRESENT RENT</u>	<u>PROPOSED RENT</u>	<u>% OF INCREASE</u>
10A	12/01/73 - 11/30/76	\$260.00	\$306.00	18
10B	11/01/75 - 10/31/77	411.80	411.80	0
10C	12/01/73 - 11/30/76	234.21	276.00	18
10D	9/01/75 - 8/31/77	536.65	536.65	0
10E	12/01/73 - 11/30/76	334.36	394.00	18
10F	11/01/73 - 10/31/76	421.55	497.00	18
10G	4/01/75 - 3/31/77	271.05	319.00	18
10H	11/01/76 - 10/31/78	417.50	450.00	8
10K	11/01/75 - 10/31/77	320.63	378.00	18
11A	7/01/75 - 6/30/77	369.00	369.00	0
11B	12/01/75 - 11/30/76	450.76	450.76	0
11C	12/01/73 - 11/30/76	235.45	277.00	18
11D	9/01/76 - 8/31/78	540.00	540.00	0
11E	1/01/75 - 12/31/76	415.82	415.82	0
11F	12/01/73 - 11/30/76	412.31	486.00	18
11G	7/01/75 - 6/30/77	328.99	328.99	0
11H	12/01/73 - 11/30/76	391.37	391.37	0
11K	3/01/76 - 2/28/78	366.79	366.79	0
12A	12/01/73 - 11/30/76	265.54	313.00	18
12B	11/01/73 - 10/31/76	338.27	399.00	18
12C	12/01/75 - 11/30/77	334.00	334.00	0
12D	7/01/76 - 6/30/78	565.00	565.00	0
12E	12/01/73 - 11/30/76	339.90	401.00	18
12F	9/15/76 - 9/30/78	577.00	577.00	0
12G	4/01/76 - 3/31/79	355.41	355.41	0
12H	11/01/76 - 10/31/78	430.84	460.00	7
12K	12/01/73 - 11/30/76	269.54	318.00	18
14A	9/01/76 - 8/31/78	390.00	390.00	0
14B	12/01/73 - 11/30/76	329.89	389.00	18
14C	8/01/76 - 7/31/78	350.00	350.00	0
14D	5/01/76 - 4/30/78	530.87	554.00	4
14E	9/01/76 - 8/31/79	429.06	429.06	0
14F	4/01/76 - 3/31/79	556.82	556.82	0
14G	7/01/76 - 6/30/79	343.50	343.50	0
14H	8/01/75 - 7/31/77	440.50	440.50	0
14K	11/01/73 - 10/31/76	295.19	348.00	18

BIRCHWOOD TOWERS #2 ASSOCIATES PROPOSED JEOPARDY RENT IMPLEMENTATION SCHEDULE

<u>APT. #</u>	<u>LEASE TERM</u>	<u>KYOTO PRESENT RENT</u>	<u>PROPOSED RENT</u>	<u>% OF INCREASE</u>
15A	12/01/75 - 11/30/77	\$299.44	\$353.00	18
15B	12/01/75 - 11/30/77	369.30	435.00	18
15C	12/01/75 - 11/30/77	270.33	318.00	18
15D	3/01/76 - 2/28/78	536.65	536.65	0
15E	7/01/76 - 6/30/79	446.55	446.55	0
15F	8/01/76 - 7/31/78	507.33	536.00	6
15G	11/01/74 - 10/31/76	267.92	316.00	18
15H	11/01/76 - 10/31/78	465.00	470.00	2
15K	7/01/75 - 6/30/77	370.00	370.00	0
16A	10/01/75 - 9/30/77	375.00	375.00	0
16B	12/01/73 - 11/30/76	372.02	438.00	18
16C	10/01/76 - 9/30/78	211.16	246.00	17
16D	9/01/76 - 11/30/76	534.00	534.00	0
16E	12/01/73 - 11/30/76	341.14	402.00	18
16F	5/01/76 - 4/30/77	455.12	537.00	18
16G	12/01/75 - 11/30/78	267.14	315.00	18
16H	11/01/73 - 10/31/76	335.29	395.00	18
16K	7/01/76 - 6/30/79	415.13	415.13	0
17A	3/01/75 - 2/28/77	375.75	375.75	0
17B	11/01/74 - 10/31/76	367.62	433.00	18
17C	2/15/75 - 2/28/77	273.54	322.00	18
17D	9/01/75 - 8/31/78	435.06	513.00	18
17E	8/01/76 - 11/30/76	433.00	433.00	0
17F	10/01/76 - 9/30/77	480.56	507.00	6
17G	7/01/76 - 10/31/76	314.15	333.00	6
17H	11/01/76 - 10/31/78	337.14	392.77	17
17K	10/01/76 - 9/30/77	356.08	374.00	5
18A	11/15/75 - 11/30/77	360.30	360.30	0
18B	12/01/73 - 11/30/76	349.61	412.00	18
18C		350.00	350.00	0
18D	12/01/73 - 11/30/76	424.05	500.00	18
18E	12/01/74 - 11/30/76	416.00	416.00	0
18F	12/01/75 - 11/30/78	501.84	501.84	0
18G	6/01/76 - 5/31/78	339.00	339.00	0
18H	1/01/76 - 12/31/77	425.74	425.74	0
18K	12/01/75 - 11/30/78	320.11	377.00	18

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BIRCHWOOD TOWERS #2 ASSOCIATES PROPOSED JEOPARDY RENT IMPLEMENTATION SCHEDULE

<u>APT. #</u>	<u>LEASE TERM</u>	<u>KYOTO PRESENT RENT</u>	<u>PROPOSED RENT</u>	<u>% OF INCREASE</u>
19A	11/01/74 - 10/31/76	\$309.57	\$365.00	18.00
19B	10/01/76 - 9/30/78	338.51	401.15	18.00
19C	12/01/75 - 11/30/78	243.21	286.00	18.00
19D	1/01/76 - 12/31/77	514.34	514.34	0.00
19E	12/15/74 - 12/31/76	419.00	419.00	0.00
19F	12/01/75 - 11/30/77	488.97	488.97	0.00
19G	12/01/73 - 11/30/76	238.63	282.00	18.00
19H	5/01/76 - 4/30/78	440.35	440.35	0.00
19K	12/01/73 - 11/30/76	276.95	326.00	18.00
20A	10/01/75 - 9/30/78	326.90	385.00	18.00
20B	8/01/76 - 7/31/77	470.00	470.00	0.00
20C	12/01/73 - 11/30/76	236.25	278.00	18.00
20D	12/01/73 - 11/30/76	554.22	653.00	18.00
20E	12/01/73 - 11/30/76	251.54	296.00	18.00
20F	9/01/76 - 8/31/78	513.00	513.00	0.00
20G	12/01/75 - 11/30/78	245.80	290.00	18.00
20H	1/01/76 - 12/31/78	456.12	456.12	0.00
20K	10/01/75 - 9/30/76	390.00	390.00	0.00
21A	10/01/76 - 9/30/78	365.18	395.00	8.00
21B	7/01/76 - 6/30/78	413.69	437.00	6.00
21C	10/01/75 - 9/30/77	305.77	305.77	0.00
21D	1/01/76 - 12/31/78	612.28	612.28	0.00
21E	9/01/76 - 8/31/78	350.00	350.00	0.00
21F	10/01/75 - 9/30/77	550.00	550.00	0.00
21G	1/01/76 - 12/31/77	329.00	329.00	0.00
21H	12/01/73 - 11/30/76	342.80	404.00	18.00
21K	2/01/76 - 1/31/79	306.59	361.00	18.00
22A	12/01/73 - 11/30/76	285.26	336.00	18.00
22B	7/15/75 - 7/31/77	450.00	450.00	0.00
22C	7/01/76 - 6/30/77	340.00	340.00	0.00
22D	12/01/73 - 11/30/76	548.67	647.00	18.00
22E	10/01/76 - 9/30/79	314.38	344.00	9.00
22F	12/01/73 - 11/30/76	428.33	505.00	18.00
22G	3/01/75 - 2/28/78	290.44	342.00	18.00
22H	7/01/76 - 6/30/78	451.58	451.58	0.00
22K	11/01/75 - 10/31/77	359.00	359.00	0.00

BIRCHWOOD TOWERS #2 ASSOCIATES PROPOSED JEOPARDY RENT IMPLEMENTATION SCHEDULE

<u>APT. #</u>	<u>LEASE TERM</u>	<u>KYOTO PRESENT RENT</u>	<u>PROPOSED RENT</u>	<u>% OF INCREASE</u>
23A	6/01/76 - 5/31/78	\$390.00	390.00	0
23B	11/01/73 - 10/31/76	344.88	406.00	18
23C	1/01/76 - 12/31/76	264.18	311.00	18
23D	12/01/73 - 11/30/76	557.92	658.00	18
23E	12/01/74 - 11/30/76	319.43	319.43	0
23F	1/01/75 - 12/31/76	530.00	530.00	0
23G	9/01/76 - 8/31/78	310.39	339.00	9
23H	2/01/75 - 1/31/78	446.00	446.00	0
23K	12/01/73 - 11/30/76	290.92	343.00	18
24A	10/01/74 - 9/30/76	313.44	369.00	18
24B	2/01/74 - 1/31/77	369.53	436.00	18
24C	12/01/75 - 11/30/77	339.00	339.00	0
24D	12/01/73 - 11/30/76	559.14	659.00	18
24E	12/01/75 - 11/30/77	329.00	329.00	0
24F	5/01/76 - 4/30/78	555.00	555.00	0
24G	7/01/76 - 6/30/78	345.00	345.00	0
24H	9/01/74 - 8/31/77	417.45	417.45	0
24K	7/01/75 - 6/30/77	307.73	363.00	18
25A	12/01/75 - 11/30/77	375.00	375.00	0
25B	1/01/76 - 12/31/78	424.01	424.01	0
25C	1/15/76 - 1/31/78	345.00	345.00	0
25D	7/01/75 - 6/30/78	557.83	658.00	18
25E	12/01/73 - 11/30/76	254.56	300.00	18
25F	12/01/75 - 11/30/77	536.65	536.65	0
25G	9/01/76 - 8/31/78	350.00	350.00	0
25H	12/01/73 - 11/30/76	350.20	413.00	18
25K	8/01/76 - 7/31/78	395.00	395.00	0
26A		396.00	396.00	0
26B	1/01/74 - 12/31/76	364.61	430.00	18
26C	10/01/75 - 9/30/77	279.99	330.00	18
26D	4/01/75 - 3/31/78	557.88	658.00	18
26E	12/01/74 - 11/30/77	262.07	309.00	18
26F	11/01/75 - 10/31/77	562.75	562.75	0
26G		355.00	355.00	0
26H	7/01/74 - 6/30/77	384.24	453.00	18
26K	11/01/75 - 10/31/78	343.70	343.70	0

40a

BIRCHWOOD TOWERS #2 ASSOCIATES PROPOSED JEOPARDY RENT IMPLEMENTATION SCHEDULE

<u>APT. #</u>	<u>LEASE TERM</u>	<u>KYOTO PRESENT RENT</u>	<u>PROPOSED RENT</u>	<u>% OF INCREASE</u>
27A	6/01/76 - 5/31/79			
27B	12/01/75 - 11/30/77	\$425.00	\$425.00	
27C	8/01/76 - 7/31/77	403.75	403.75	0
27D	12/01/75 - 11/30/77	350.90	350.90	0
27E	7/01/75 - 6/30/77	677.25	677.25	0
27F	12/01/73 - 11/30/76	325.00	325.00	0
27G	11/01/75 - 10/31/77	441.27	520.00	0
27H	11/01/73 - 10/31/76	340.00	520.00	18
27K	2/01/74 - 1/31/77	363.14	340.00	0
28A	4/01/74 - 3/31/77	285.89	428.00	18
28B	12/01/73 - 11/30/76	327.71	337.00	18
28C	4/01/75 - 3/31/77	356.87	386.00	18
28D	7/01/75 - 6/30/77	303.26	421.00	18
28E	6/01/76 - 5/31/77	675.00	303.26	0
28F	9/01/76 - 8/31/78	334.43	675.00	0
28G	7/01/76 - 11/30/76	595.00	334.43	0
28H	5/01/76 - 4/30/78	345.65	595.00	0
28K	12/01/75 - 11/30/77	465.00	345.65	0
29A	12/01/75 - 11/30/78	331.07	465.00	0
29B	3/01/75 - 2/28/77	346.58	390.00	18
29C	8/01/76 - 7/31/78	445.00	346.58	0
29D	SEE 29C	1000.00	445.00	0
29E	2/01/75 - 1/31/78		1000.00	0
29F	10/01/75 - 9/30/77	295.27		0
29G	2/01/76 - 1/31/78	542.42	295.27	0
29H	12/01/74 - 11/30/77	349.00	542.42	0
29K	2/01/76 - 1/31/78	403.56	349.00	0
		374.78	403.56	0
			374.78	0

WHERE APPLICABLE, GARAGE RENTALS WILL BE RAISED TO A MAXIMUM OF \$50.00 PER SPACE AS LEASES EXPIRE

42a
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
AREA OFFICE
666 FIFTH AVENUE
NEW YORK, NEW YORK 10019

TRUE COPY

REGION II
26 Federal Plaza
New York, New York 10007

IN REPLY REFER TO
2.1HL (O'Callaghan)

September 20, 1976

Mr. Jerrold Lieberman, Partner
Birchwood Associates
410 East Jericho
Mineola, New York 11501

Re: Birchwood Towers #1
Project No. 012-00901

Dear Mr. Lieberman:

The implementation schedule submitted in relation to the above project has been reviewed and found acceptable under our regulations.

Sincerely,

Donald J. Foy
Loan Management Branch

43a
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
AREA OFFICE
666 FIFTH AVENUE
NEW YORK, NEW YORK 10019

TRUE COPY

REGION II
26 Federal Plaza
New York, New York 10007

IN REPLY REFER TO
2.1HL (O'Callaghan)

September 20, 1976

Mr. Jerrold Lieberman, Partner
Birchwood Associates
410 East Jericho
Mineola, New York 11501

Re: Birchwood Towers #2
Project No. 012-00902

Dear Mr. Lieberman:

The implementation schedule submitted in relation to the above project has been reviewed and found acceptable under our regulations.

Sincerely,

Donald J. Foy
Loan Management Branch

October 5, 1976

Mr. Thomas O'Callahan
FEDERAL HOUSING ADMINISTRATION
666 Fifth Avenue
New York, New York 10019

RE: BIRCHWOOD TOWERS #1 ASSOCIATES
FHA Project No. 012-00901
BIRCHWOOD TOWERS #2 ASSOCIATES
FHA Project No. 012-00902

Dear Mr. O'Callahan:

Commensurate with the Letter of Preemption issued by the FHA on September 1, 1976 and amended by the FHA on September 9, 1976; and further in accordance with Mr. Foy's letter of approval of our proposed Jeopardy Rent Implementation Schedule dated September 20, 1976, copies of the attached letters were delivered by certified mail and regular mail to each of the tenants in the above referenced FHA projects on Monday, September 28, 1976. That is, they were delivered to all three buildings of Birchwood Towers. We are sending you blank copies of these letters for your use and information.

Although your guidelines restrict us to an initial increase not to exceed 20%, we wish to point out that in Birchwood Towers #2, the increase to any tenant will not exceed 18%. In any event, in both projects, there are a substantial number of tenants who have presently received no increase, nevertheless, they have been appropriately notified.

The total increase that we were premitted to charge was apportioned only to those apartments where rents were, in our opinion, substantially below market levels as compared to the rents being paid by other tenants in the buildings for similar accommodations, but which tenants have been in residence for considerably shorter periods of time.

In other words, we have attempted to adjust the inequality of rentals we were premitted to charge in accordance with the restrictions previously imposed upon us by the New York City Rent Stabilization guidelines. In essence, the impact of the Rent Stabilization guidelines has always been to maintain a substantial differential in rent paid by a tenant who has lived in the building for many years as compared to a tenant who has taken occupancy considerably more recently.

- Continued -

440 east jericho turnpike

mineola, n.y. 11501

(516) 747-7880

our 28th year

Mr. Thomas O'Callahan
FEDERAL HOUSING ADMINISTRATION

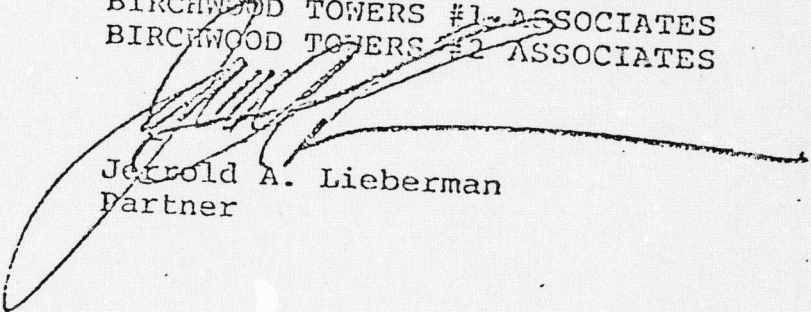
October 1, 1976
Page Two

In order that there be no dispute as to notice to the tenants, copies of the letters were sent both by certified mail and regular mail. In addition, copies of the Implementation Schedule have been posted in the mailroom of each of the three buildings, along with copies being maintained in the Superintendent's office. Furthermore, signs were placed in all of the elevator cabs and each of the main entrances to the buildings advising the tenants of the fact that Schedules have been posted in each of the buildings' mailrooms for their perusal.

We will naturally keep you informed as to the nature of any response which we receive from any tenant who has been presently affected by the preemption.

Very truly yours,

BIRCHWOOD TOWERS #1 ASSOCIATES
BIRCHWOOD TOWERS #2 ASSOCIATES



Jerrold A. Lieberman
Partner

JAL/gls

CC: Marvin Garfinkel, Esquire
2201 Packard Building
15th & Cherry Sts.
Philadelphia, Pa. 19102

102-30 66th Road

BIRCHWOOD TOWERS

park

46a

Forest Hills, New York, 11375

Dear Tenant(s):

RE: Apartment - Toledo

The operations of Birchwood Towers have over the past several years, despite nearly full occupancy, resulted in significant operating losses and cash deficits. As a result, the building has been unable, on the basis of stabilized rents, to produce adequate revenue to provide for operating and maintenance expenses, and service of the F.H.A. insured mortgage. This is attributable to the significant difference under Rent Stabilization Regulations of the rents for similar apartments in the same building. In some cases, such rent differentials exceed 20%.

As a result of the inability of the building, on the basis of stabilized rents, to satisfy its cash needs, and continue to operate as a quality residence, the Federal Housing Administration of the United States Department of Housing and Urban Development has preempted the New York City Rent Stabilization Association from regulating rentals for the apartments in your building, and a new rental schedule has now been established.

It has been apparent since the full impact of utility and other operating cost increases have been felt, that unless rents were equalized and brought more nearly into conformity with the F.H.A. authorized rents, that the F.H.A. might incur a loss under its insurance commitment.

As a result of this action on the part of F.H.A., rents may now be more nearly equalized and increased to the level necessary to permit the building to remain viable. In taking this action, the Department of Housing and Urban Development has emphasized that it is its policy, generally, not to interfere with local regulations in this area, but that it will assert its exclusive jurisdiction under certain circumstances when the United States government's interests are being jeopardized. The severe problems of your building have presented just such a case and the Federal agency has felt it appropriate in this case, after a detailed review of the circumstances, to so act. Copy of Administrative Determination dated September 1, 1976 is attached hereto.

The schedule of new rents are available for inspection in the Superintendent's Office. These new rents will become effective as of November 1, 1976 and until further notice, your new rent will be \$. Please note that all rents in the building are not being increased. As previously indicated, rents are being adjusted to better equalize the relative rent of various apartments and, at the same time, provide the essential increase in cash flow to avoid default under the F.H.A. mortgage. * Additional copies of the schedule are posted in your mailroom.

Very truly yours,

BIRCHWOOD TOWERS # 2 ASSOCIATES

Certified. & Reg.

440 east 14th Street

New York, N.Y. 10003

at 26th year

(516) 747-7880

66-35 Yellowstone Blvd.
Forest Hills, New York, 11375

Dear Tenant(s):

RE: Apartment - Belair

The operations of Birchwood Towers have over the past several years, despite nearly full occupancy, resulted in significant operating losses and cash deficits. As a result, the building has been unable, on the basis of stabilized rents, to produce adequate revenue to provide for operating and maintenance expenses, and service of the F.H.A. insured mortgage. This is attributable to the significant difference under Rent Stabilization Regulations of the rents for similar apartments in the same building. In some cases, such rent differentials exceed 20%.

As a result of the inability of the building, on the basis of stabilized rents, to satisfy its cash needs, and continue to operate as a quality residence, the Federal Housing Administration of the United States Department of Housing and Urban Development has preempted the New York City Rent Stabilization Association from regulating rentals for the apartments in your building, and a new rental schedule has now been established.

It has been apparent since the full impact of utility and other operating cost increases have been felt, that unless rents were equalized and brought more nearly into conformity with the F.H.A. authorized rents, that the F.H.A. might incur a loss under its insurance commitment.

As a result of this action on the part of F.H.A., rents may now be more nearly equalized and increased to the level necessary to permit the building to remain viable. In taking this action, the Department of Housing and Urban Development has emphasized that it is its policy, generally, not to interfere with local regulations in this area, but that it will assert its exclusive jurisdiction under certain circumstances when the United States government's interests are being jeopardized. The severe problems of your building have presented just such a case and the Federal agency has felt it appropriate in this case, after a detailed review of the circumstances, to so act. Copy of Administrative Determination dated September 1, 1976 is attached hereto.

The schedule of new rents are available for inspection in the Superintendent's Office. *These new rents will become effective as of November 1, 1976 and until further notice, your new rent will be \$. Please note that all rents in the building are not being increased. As previously indicated, rents are being adjusted to better equalize the relative rent of various apartments and, at the same time, provide the essential increase in cash flow to avoid default under the F.H.A. mortgage. *Additional copies of the schedule are posted in your mailroom.

Very truly yours,

BIRDWOOD TOWERS # 1 ASSOCIATES

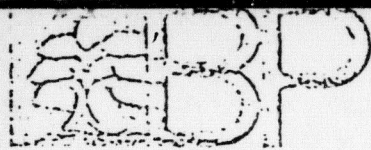
Certified. & Reg.

440 East Jericho Turnpike

in Garden City 11504

(516) 747-7880

on 25th year



Birchwood

48a

Park

102-10 66th Road
Forest Hills, New York, 11375

Dear Tenant(s):

RE: Apartment - KYOTO

The operations of Birchwood Towers have over the past several years, despite nearly full occupancy, resulted in significant operating losses and cash deficits. As a result, the building has been unable, on the basis of stabilized rents, to produce adequate revenue to provide for operating and maintenance expenses, and service of the F.H.A. insured mortgage. This is attributable to the significant difference under Rent Stabilization Regulations of the rents for similar apartments in the same building. In some cases, such rent differentials exceed 20%.

As a result of the inability of the building, on the basis of stabilized rents, to satisfy its cash needs, and continue to operate as a quality residence, the Federal Housing Administration of the United States Department of Housing and Urban Development has preempted the New York City Rent Stabilization Association from regulating rentals for the apartments in your building, and a new rental schedule has now been established.

It has been apparent since the full impact of utility and other operating cost increases have been felt, that unless rents were equalized and brought more nearly into conformity with the F.H.A. authorized rents, that the F.H.A. might incur a loss under its insurance commitment.

As a result of this action on the part of F.H.A., rents may now be more nearly equalized and increased to the level necessary to permit the building to remain viable. In taking this action, the Department of Housing and Urban Development has emphasized that it is its policy, generally, not to interfere with local regulations in this area, but that it will assert its exclusive jurisdiction under certain circumstances when the United States government's interests are being jeopardized. The severe problems of your building have presented just such a case and the Federal agency has felt it appropriate in this case, after a detailed review of the circumstances, to so act. Copy of Administrative Determination dated September 1, 1976 is attached hereto.

The schedule of new rents are available for inspection in the Superintendent's Office. *These new rents will become effective as of November 1, 1976 and until further notice, your new rent will be \$. Please note that all rents in the building are not being increased. As previously indicated, rents are being adjusted to better equalize the relative rent of various apartments and, at the same time, provide the essential increase in cash flow to avoid default under the F.H.A. mortgage. * Additional copies of the schedule are posted in your mailroom.

Very truly yours,

BIRCHWOOD TOWERS # 2 ASSOCIATES

Certified & Reg.

410 East Jericho Turnpike

Forest Hills, N.Y. 11375

(516) 747-7880

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
LYNN ARGO, ARNOLD ARGO,
HELEN DENNIS, JAY CROSSMAN, JUDY
SWEDE, individually and as Directors
of BIRCHWOOD TOWERS TENANTS
ASSOCIATION, INC.; MAX WULFSON
and DORA FRIEDMAN, individually;
and BIRCHWOOD TOWERS TENANTS
ASSOCIATION, INC.,

Civil Action No.

COMPLAINT

Plaintiffs,

-against-

CARLA HILLS, individually and as
Secretary of HOUSING AND URBAN
DEVELOPMENT OF THE UNITED STATES;
MORRIS SOSNOW, KATE SOSNOW, LEONARD
R. SCHWARTZ, JERROLD A. LIEBERMAN,
BERNICE LIEBERMAN, and LORRAINE
S. SANFORD, doing business as
BIRCHWOOD TOWERS #1 ASSOCIATES and
doing business as BIRCHWOOD TOWERS
#2 ASSOCIATES; THE CONCILIATION AND
APPEALS BOARD; and THE HOUSING AND
DEVELOPMENT ADMINISTRATION OF THE CITY
OF NEW YORK,

Defendants.

-----X
Plaintiffs, by their attorneys, ROSENSTEIN & KAHN,
for their Complaint, allege:

JURISDICTION AND VENUE

1. Jurisdiction is conferred upon this court by the
following provisions of law:

(a) 28 U.S.C. Section 1361 providing for original
jurisdiction in this court of actions in the nature of mandamus
to compel an officer, employee or agency of the United States

to perform a duty owed to a plaintiff. Plaintiffs seek an order from this Court to compel the Secretary of HOUSING AND URBAN DEVELOPMENT to perform certain acts set forth below.

(b) 28 U.S.C. Section 1337 which provides for original jurisdiction in this court for suits arising out of an Act of Congress relating to commerce. This action arises under the Department of Housing and Urban Development Act, 42 U.S.C. Section 3531 et seq. and the National Housing Act, 12 U.S.C. 1701 et seq.

(c) 28 U.S.C. Section 1346(a)(2) which provides for original jurisdiction in this court for civil actions against the United States, founded upon the Constitution or any Act of Congress.

2. Venue lies in this court under 28 U.S.C. Section 1392(a) as defendants reside in different districts in this state. This action is not of a local nature.

PARTIES

3. Plaintiff BIRCHWOOD TOWERS TENANTS ASSOCIATION, INC. (hereafter referred to as "The Tenants Association") is a Not-For-Profit corporation, incorporated under the laws of New York, as a membership type corporation, whose members are comprised solely of tenants residing in Birchwood Towers, a residential development located in Forest Hills, New York. The Tenants Association's sole purpose is to assist and act for and on behalf of its members in their relations with their landlord and the government agencies having jurisdiction over the use and occupancy of their housing.

4. LYNN ARGO, ARNOLD ARGO, HELEN DENNIS, JAY GROSSMAN and JUDY SWEDE are Directors of the Tenants Association. Each resides at Birchwood Towers. MAX WULFSON and DORA FRIEDMAN are tenants residing at Birchwood Towers.

5. MORRIS SOSNOW, KATE SOSNOW, LEONARD R. SCHWARTZ, JERROLD A. LIEBERMAN, BERNICE LIEBERMAN and LORRAINE S. SANFORD are partners doing business as BIRCHWOOD TOWERS #1 ASSOCIATES and BIRCHWOOD TOWERS #2 ASSOCIATES (hereafter referred to jointly as "The Landlord"). BIRCHWOOD TOWERS #1 ASSOCIATES owns the building known as 66-36 Yellowstone Blvd., Forest Hills, New York. BIRCHWOOD TOWERS #2 ASSOCIATES owns the building known as 102-10 and 102-30 66th Road, Forest Hills, New York. These buildings make up the development known as Birchwood Towers.

6. The defendant CARLA HILLS is Secretary of the HOUSING AND URBAN DEVELOPMENT DEPARTMENT (hereafter referred to as "HUD"), and as such is the Chief Administrator and Executive of the agency and the person primarily responsible for the administrative activities of HUD.

7. THE CONCILIATION AND APPEALS BOARD (hereafter referred to as "CAB") is an administrative body whose members are appointed by the Mayor of The City of New York with the approval of the New York City Council pursuant to the City Administrative Code, and authorized to receive and act upon complaints of designated landlords and tenants.

8. THE HOUSING AND DEVELOPMENT ADMINISTRATION of The City of New York (hereafter referred to as "HDA"), the agency

charged with the administration of the Rent Stabilization Law and the Rent Stabilization Code, is the supervising agency of the CAB, the agency charged with administering the Rent Stabilization Code.

NATURE OF ACTION AND CONTROVERSY

9. This is a civil action for judicial review of and declaratory and injunctive relief pursuant to 28 U.S.C. Section 2201 and 5 U.S.C. Section 706 with respect to the validity of a rule issued by HUD, and an Order issued thereunder by HUD, which order purports to pre-empt Birchwood Towers from all local rent control laws. Plaintiffs assert various constitutional statutory and administrative grounds in support of this action.

10. Plaintiffs seek a declaration that local rent control laws, specifically the Rent Stabilization Law and the Rent Stabilization Code, are in full force and effect and continue to govern the landlord-tenant relations of the individual plaintiffs and the landlord.

11. Plaintiffs further seek an Order directing the landlord to complete certain applications for rent increases pending before the CAB, and further directing the HDA and CAB to take prompt actions to adjudicate the same.

12. Plaintiffs further seek an injunction to enjoin certain of the defendants from taking any action whatsoever in reliance upon the said rule or any HUD order issued thereunder, including any action to demand or collect any rent increases based upon said rule or HUD order, or otherwise disturb the possession of any tenant member of the Tenants' Association by reason of his non-payment of such increase or his failure to renew a lease offered by the landlord and based on such increased rental.

13. Plaintiffs, due to the gravity of the actual and threatened harm to them from the enforcement of said rule and order, request a speedy hearing and advancement of this cause pursuant to Rule 57, FRCP.

FACTUAL ALLEGATIONS

14. Individual plaintiffs are residents of Birchwood Towers, a middle income development built in 1963. The development consists of three buildings of approximately 740 dwelling units.

15. Birchwood Towers was conventionally financed and built without public funds or subsidies. A conventional mortgage was executed on May 3, 1963 with the East New York Savings Bank in the principle amount of \$5,252,400.00 for a term of forty years by Birchwood Towers #1 Associates. Said mortgage is recorded in the Queens County Register's Office in Mortgage Liber 8167, at page 467. Said mortgage covers the premises at 66-36 Yellowstone Blvd., Forest Hills.

16. A conventional mortgage was executed on May 3, 1963 with the John Hancock Mutual Life Insurance Company in the principal amount of \$10,504,600.00 for a term of forty years, by the defendant Birchwood Towers #2 Associates. Said mortgage is recorded in the Queens County Register's Office in Mortgage Liber 8190 at page 146. This mortgage covers the premises at 102-10 and 102-30 66th Road, Forest Hills.

17. At or about the same time, the United States Department of Housing and Urban Development endorsed and guaranteed payment of each of the said mortgage notes and entered into a regulatory agreement with the Landlord.

18. On May 16, 1969 the New York City Council enacted Local Law 16, the Rent Stabilization Law, Title YY51-1.0 et seq.,

of the New York City Administrative Code. The statute was enacted pursuant to a finding and declaration of emergency existing in the New York City residential housing market.

19. The law authorized the creation of an association of landlords whose properties were constructed after 1947. The law further required these landlords to become members of the said association.

20. The Stabilization Law authorized the said association to promulgate a Rent Stabilization Code subject to the approval of the defendant HDA. Section YY51-6.0(c) of the Stabilization Law provides, "that a code shall not be approved hereunder unless it appears to the HDA that the code is designed to provide safeguards against unreasonably high rent increases and in general, to protect tenants and the public interest."

21. The law further required the RENT STABILIZATION ASSOCIATION to establish a Conciliation and Appeals Board, which Board, among other duties, was required to receive complaints from tenants and appeals from owners claiming economic hardship.

22. The law further required at Section YY51-6.0(b)(4), each member of the Association to agree in writing to comply with the Rent Stabilization Code and to abide by the orders of the Conciliation and Appeals Board.

23. Pursuant to the requirements of the law and code, the defendants BIRCHWOOD TOWERS #1 ASSOCIATES and BIRCHWOOD TOWERS #2 ASSOCIATES joined the Rent Stabilization Association. At all times herein mentioned, they have been and continue to be members in good standing in the Association.

24. Both the owners and the apartments became subject to the terms and regulatory mechanisms of the law and the code. Individual plaintiffs and the landlord are presently subject to this law.

25. The Rent Stabilization Code promulgated under the law pursuant to Section YY51-6.0 was approved by defendant HOUSING AND DEVELOPMENT ADMINISTRATION.

26. The Code prescribes the terms and conditions under which rents may be increased in subject residential leases, and explicitly includes provisions for increases upon renting vacant apartments; upon renewing leases; upon making major capital improvements; and for providing electricity to tenants.

27. In addition, Section 43 of the Rent Stabilization Code expressly provides for rent increases in the event of an owner's economic hardship. This section provides for increases to be paid over and above other increases and in an amount up to six (6%) percent per year.

28. The hardship increase provided by Section 43 is effective retroactively to a time thirty (30) days after a landlord files a written application upon written notice to the tenants who then have an opportunity to be heard and challenge the factual basis for the proposed increase, both orally and in writing, by counsel, and with subsequent judicial review.

29. On or about November 11, 1974 the landlord filed applications for hardship increases with the CAB.

30. On or about June, 1975, the Rent Stabilization Law was amended by the New York State Legislature by Chapter 576 of the Laws of 1975, and the ~~formula~~ for calculating hardship increases was revised.

31. Thereafter, a test case was commenced by a New York City landlord to determine whether the amended hardship provision applied to pending hardship applications, including those filed by the landlord herein.

32. Thereafter, on or about April 15, 1976, the Appellate Division of the Supreme Court of the State of New York held that

the amended formula governed all pending applications except in cases where the applicant could show undue delay in processing a pending application.

33. Thereafter, on May 24, 1976, and again on June 1, 1976, the CAB notified the landlord of the foregoing decision and advised the landlord either to complete its applications or advise the CAB if it had a claim of undue delay. See letters attached hereto as Exhibit #1.

34. Notwithstanding the aforesaid demands by the CAB for completion, the landlord wholly and completely failed, neglected and refused to comply with the CAB request and has not to this day completed its application. Nor has it instituted an appropriate judicial proceeding or complained therein of impropriety or delay on the part of the CAB.

35. On or about October 22, 1975 HUD promulgated "final rule on local rent control" under Title 24 CFR, Chapter IV, Part 403, and published said rule in the Federal Register at 40 FR 49318. A copy of said rule is attached as Exhibit #2. Rule 403, comprised of 4 subparts, purports to set forth conditions under which HUD may pre-empt the regulation of rentals by local rent control agencies, and purports to set forth procedures implementing such pre-emption.

36. Subpart B, Sections 403.4 through 403.6 of the said Rule applies to unsubsidized insured projects including Birchwood Towers.

37. On information and belief, the landlord applied to HUD on or about February 15, 1976 for rent increases while the foregoing hardship applications were pending before the CAB. On information and belief, the CAB wrote to HUD on or about June 29, 1976, stating that the landlord had never completed its applications to the CAB. A copy of said correspondence is attached

as Exhibit #3.

38. Thereafter, on or about September 1, 1976 the defendant HUD issued a purported administrative adjudication, in the form of an order, which approved the landlord's requested rent increases and concluded that "the delay in the New York City Rent Stabilization Association which prevents implementation of the rent increases approved by HUD will jeopardize the Department's economic interests in these projects." A copy of said Order is attached hereto as Exhibit #4.

39. The above order, addressed to the NEW YORK HOUSING AND DEVELOPMENT ADMINISTRATION, RENT AND HOUSING DIVISION, purported to "pre-empt your regulation of rentals of a captioned project." Thereafter, on or about September 23, 1976, the landlord sent a letter to each tenant in each building, advising that HUD had pre-empted the buildings from local rent control and further advising that a new rental schedule would be effective as of November 1, 1976. A copy of said letter is attached hereto as Exhibit #5.

40. The schedule of new rents, designated "proposed jeopardy rent implementation schedule," indicates that substantially all of the leases in the buildings are unexpired and will expire during the years 1977, 1978 and 1979. A copy of said schedule is attached hereto as Exhibit #6.

41. Notwithstanding the existence of the said leases, the landlord, in reliance upon the pre-emption order of HUD, has demanded monthly increases in an amount up to twenty (20%) percent, from approximately half of the tenants residing at Birchwood Towers without approval of the CAB or any local rent agency. More particularly, landlord has demanded increases of each of the individual plaintiffs, except the plaintiffs LYNN and ARNOLD ARGO.

42. The landlord further relies on a provision inserted in each plaintiff's lease or renewal lease, which provides in substance that the tenant agrees to pay any increases which may be imposed during the term of the lease by the FHA.

43. Plaintiffs assert that any such FHA pass-through proviso was and is void under the Rent Stabilization Code and the decisions of the CAB.

44. Landlord has offered to members of the Tenants Association renewal leases containing similar pass-through clauses and other language unauthorized by the Rent Stabilization Code and the decisions of the CAB.

45. The landlord now threatens to dispossess and evict any plaintiff or other tenant residing in Birchwood Towers who fails to pay the rent increases demanded or who fails to sign the above renewal, and threatens to bar the use of any state or local law, ordinance or regulation as a defense thereto.

46. In view of the landlord's actual and threatened enforcement of the rule and the pre-emption order promulgated thereunder and the plaintiffs' contention that the promulgation of the rule and the enforcement of the pre-emption order are null and void, of no effect, and unauthorized by law, there is an actual controversy within the jurisdiction of this court. A binding declaration by this court as to the validity of the rule and the pre-emption order promulgated thereunder will effectively adjudicate the rights of the parties.

AS AND FOR A FIRST CAUSE OF ACTION

47. Plaintiffs repeat, reiterate and reallege each of the aforementioned allegations contained above in paragraphs "1" through "46".

AS AND FOR A FOURTH CAUSE OF ACTION

63. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs numbered "1" through "62".

64. The Rule is defective on its face since it provides for taking of property without any of the fundamental prerequisites of due process in that the Rule on its face:

- (a) Fails to provide for notices to affected parties;
- (b) Fails to provide for any opportunity whatsoever to be heard;
- (c) Fails to provide for opportunity to examine, review, challenge or contest the factual claims of the landlord;
- (d) Fails to define the critical operating criteria upon which a HUD determination is based; and establishes no standards for determining what constitutes delay, decision or economic jeopardy;
- (e) Fails to set forth explicit criteria to ascertain the dollar amount of rent increases per tenant, thus rendering the Rule unsusceptible of uniform application;
- (f) Permits the determination to pre-empt to be made in concert between interested parties who share a common economic interest, and without impartial review;
- (g) Is impermissibly overbroad in so far as it purports to suspend and supercede all state and local laws touching upon, in any way, the regulation of residential housing subject to the order.

65. For the aforesaid reasons, the Rule is void under the Due Process Clause of the Fifth Amendment to the United States Constitution.

AS AND FOR A FIFTH CAUSE OF ACTION

66. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs numbered "1" through "66".

67. The Rent Stabilization Law was promulgated in response to a housing emergency found to exist in the City of New York by the City Council. The emergency continues to this date.

68. Each plaintiff and each tenant at Birchwood Towers paid rent according to the terms of his or her lease. Certain rent increases are authorized by the local Rent Stabilization Law and Code.

69. The local law confers valuable property rights and entitlements upon plaintiffs and the tenants. Neither increases in rent nor disturbances of possession may be affected except in compliance with local laws or upon application to the CAB in certain limited circumstances. In either case, plaintiffs are entitled to full notices and an opportunity to be heard.

70. By reason of the actions of HUD in concert with the landlord, the pre-emption letter of September 1, 1976 deprives plaintiffs of their aforesaid property rights and entitlements without due process of law.

71. The application of the Rule to the plaintiffs in this case is wholly without due process of law. The pre-emption determination was made without notice and without any opportunity to be heard by plaintiffs whatsoever.

72. On information and belief, the determination of economic jeopardy was utterly arbitrary and capricious; was determined by the landlord in the first instance and approved by the defendant HUD on an ad hoc basis and without reference to any objective published criteria, and HUD unlawfully delegated to the landlord the allocation of rent increases among the plaintiffs

and other tenants at Birchwood Towers. The said allocation is wholly illegal, arbitrary and capricious and without rational basis.

73. On information and belief, there was no economic jeopardy by any reasonable standard and any contrary finding by HUD is without rational basis. In fact, any economic injury claimed by the landlord could be completely redressed through the mechanisms provided under local law for determining hardship applications filed by the landlord and now pending before the CAB.

74. The landlord has neglected to this day to complete its application pending before the CAB and exhaust its remedies afforded under local law. The landlord has failed to complete its application despite the written request of the Conciliation and Appeals Board that it do so.

75. For the aforesaid reasons, the conclusion of HUD asserted in its determination of September 1, 1976, that delay will jeopardize HUD's economic interest, is wholly without factual support.

76. For the aforesaid reasons, the Rule has been applied to plaintiffs without due process of law and in violation of their rights under the Fifth Amendment to the Constitution of the United States.

AS AND FOR A SIXTH CAUSE OF ACTION

77. Plaintiffs repeat, reiterate and reallege each and every allegation set forth in paragraphs numbered "1" through "76".

78. The pre-emption order and the imposition of additional rents thereunder abrogates the contractual rights enjoyed by plaintiffs under their lease agreements with the landlord in

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
LYNN ARGO, et al.,

Plaintiffs,

76 Civ. 1969 (TCP)

-against-

CARLA HILLS, individually, and as
Secretary of HOUSING AND URBAN
DEVELOPMENT OF THE UNITED STATES,
et al.,

ORDER

Defendants.
-----x

The Plaintiffs, having moved for a Preliminary Injunction by Order to Show Cause dated October 19, 1976, and defendants Birchwood Towers #1 Associates and Birchwood Towers #2 Associates ("the Landlord"), having moved for a Preliminary Injunction and other relief by Order to Show Cause dated November 3, 1976, upon consent of the attorneys for plaintiffs and the attorneys for Landlord, it is, until further Order of this Court,

1. ORDERED that Landlord shall not initiate any disposses action on the ground of failure to pay rent or improper holdover against any tenant-member who makes the payments set forth in Paragraphs 2 and 3 below and who makes the election described therein, provided:

(a) Payment of the amounts provided for in Paragraphs 2 and 3 below by the tenant-members and acceptance of such payments by the landlord shall be without prejudice to the claims of any party;

(b) Landlord shall not be restrained from taking any action against any tenant who is not a member of plaintiff Birchwood Towers Tenants Associations; and it is further

2. ORDERED, that each member of plaintiff Birchwood Towers Tenants Association including, but not limited to, those listed on the annexed Schedule A ("the tenant-members") shall pay to Landlord each month the following amounts as rent:

(a) Tenant-members occupying dwelling units as to which leases are now currently in effect shall pay to the Landlord the rent provided for in said leases for such dwelling unit

(b) Tenant-members occupying dwelling units as to which leases have heretofore expired or shall hereafter expire and who elect to continue to occupy such dwelling unit after such expiration shall pay to the Landlord the rent provided for by current CAB guidelines with respect to the dwelling unit and garage space, if applicable, for the lease period, and the renewal period selected by such tenant-members as described below. Within ten (10) days after service of this Order with notice of entry upon attorneys for plaintiff Birchwood Towers Tenants Association, each of the tenant-members occupying dwelling units as to which leases have heretofore expired or which expire on November 30, 1976, and who wish to continue occupying such dwelling unit shall notify the Landlord as to whether such tenant desires to continue to occupy such dwelling unit and garage space on the basis of a one year renewal, a two year renewal or a three year renewal by executing and returning to the Landlord the Landlord's renewal application together with the tenant-member's check for the appropriate addition to the security deposit. (The CAB guidelines rent for tenant-members is rent paid under the expired lease plus 10% for a one year renewal, 11-1/2% for a two year renewal; and 14-1/2% for a three year renewal. As to any garage, the CAB guidelines rent is the amount payable under the expired lease plus 6-1/2% for a one

year renewal, 8-1/2% for a two year renewal and 11% for a three year renewal. With respect to tenant-members whose leases expire on or after December 31, 1976, each tenant-member shall notify Landlord of his/her election to continue in occupancy of such tenant-member's dwelling unit by signing and returning the Landlord's renewal application together with the appropriate increase in security deposit at least thirty (30) days prior to the expiration of the current lease; a renewal lease and rider in the form presently in use by the Landlord shall thereafter be executed within twenty (20) days and shall bear the legend "This Renewal is Executed Without Prejudice To The Rights of Either Party With Respect To Any Issue Pending Before The United States District Court"; and it is further

3. ORDERED that each tenant-member who has been notified of a HUD increase in rentals pursuant to the HUD jeopardy rental implementation schedule shall pay each month to Rosenstein & Kahn, Esqs., the attorneys for the Birchwood Towers Tenants Association, ~~and to Squadron, Ellenoff & Plesent, the attorneys for the Landlord~~ as ~~joint~~ escrow agents, the amount by which the HUD jeopardy scheduled rental allocated to the dwelling unit occupied by such tenant-member exceeds the current lease rental or the CAB guidelines rental for the renewal period selected by the tenant-member, if any. Said sum shall be paid by separate check or money order to be sent to ^{ROSENSTEIN & KAHN, Esqs} ~~the Landlord~~ by each such tenant-member together with ~~his/her monthly rent check~~. ~~The Landlord shall transmit such sums~~ ^{shall} ~~to the escrow agents~~ ^{such amounts} ~~for deposit in an interest bearing account~~ ^{AND} ~~The escrow agents shall not be liable for any act or omission as~~ ^{shall transmit to the Landlord at monthly intervals copies of all checks and money} ~~escrow agents except for wilfull misconduct; and it is further~~ ^{receive}

4. ORDERED (a) in the event it is finally determined after any appeals which may be taken by any party that the preemption of local rental control by HUD as to Birchwood Towers was not valid and/or that the Landlord is not entitled to any increase in rental.

other than that provided for by CAB, the money paid into escrow pursuant to Paragraphs 3 above, by each tenant-member shall be returned to such tenant-member without interest.

(b) In the event it is finally determined in this action as stated above that the Landlord is allowed to demand and receive the HUD rentals set forth on the HUD jeopardy rental implementation schedule, the monies paid into Court pursuant to Paragraph 2(b) above by each tenant-member shall be paid over to the Landlord. In the event that the Landlord is allowed to demand and receive the HUD jeopardy rents, either by preliminary order of the Court or after final judgment, then, notwithstanding any lease that may then be in effect, each of the tenant-members shall have the right to cancel his/her tenancy and vacate the dwelling unit occupied by such tenant-member by giving written notice of such intention to the Landlord within thirty (30) days after such determination that such tenant-member will vacate the premises within sixty (60) days thereafter; and if such tenant-member vacates the dwelling unit occupied by such tenant-member within such sixty day period, said tenant-member shall have no liability for rent for any period following the end of the month in which such tenant-member shall vacate the dwelling unit, but during the period prior to the time such tenant-member vacates the dwelling unit, such tenant-member shall pay the HUD jeopardy rental; and it is further

5. ORDERED that the Landlord shall comply with all applicable State and local health and safety provisions and shall furnish and provide to the premises all maintenance and services required by law.

Dated: Brooklyn, New York
November 12, New York

Thomas C. Platt
Thomas C. Platt, U.S.D.J.

Consented To:

Squadron Ellenoff + Present by Neal M Goldman
Rosenstein + Kahn by BARNEY ROSENSTEIN

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

LYNN ARGO, et al.,

76 C 1959

Plaintiffs,

OPINION and ORDER

-against-

January 13, 1977

CARLA HILLS, individually and as
Secretary of HOUSING AND URBAN
DEVELOPMENT OF THE UNITED STATES, et al.,
Defendants.

-----x

PLATT, D.J.

This case involves the complex interplay of the New York City rent control laws, the National Housing Act, and the Due Process Clause. It comes before this Court on cross-motions for injunctions to prohibit or order the payment of certain rent increases.

FACTS

Birchwood Towers #1 and Birchwood Towers #2 ("Birchwood Towers") are multifamily housing projects located in Forest Hills, New York. The plaintiffs in this action are various individual tenants of Birchwood Towers and the Birchwood Towers Tenants Association, Inc. ("Tenants"). The defendants are the owners and operators of Birchwood Towers ("Landlord"), Carla Hills as Secretary of the Department of Housing and Urban Development ("HUD"), the Conciliation and Appeals Board of the City of New York ("CAB") which is authorized to administer the Rent

Birchwood Towers is a middle income development built in 1963 which was financed by two mortgages totaling nearly sixteen million dollars. These mortgages were endorsed and guaranteed by HUD pursuant to § 207 of the National Housing Act, 12 U.S.C. § 1713. As a condition of guaranteeing the mortgages, HUD required the Landlord to sign a regulatory agreement which allows HUD to control the Landlord's activities as to "rents or sales, charges, capital structure, rate of return, and methods of operation to such extent and in such manner as to provide reasonable rentals to tenants and a reasonable return on the investment."

12 U.S.C. § 1713(b)(2).

In 1969 the New York City Rent Stabilization Law and Rent Stabilization Code ("rent control laws") became effective and Birchwood Towers joined the Rent Stabilization Association and became subject to those laws. At that time, apparently in order to comply with HUD's regulatory agreement, the Landlord put into all leases for apartments at Birchwood Towers a rider which provided that should HUD approve or require a rental charge greater than that approved or required by the CAB under the local rent control laws, the tenant would pay the federally approved rental immediately.

On November 4, 1974, the Landlord applied to CAB for hardship rent increases allowable under § 43 of the Rent Stabilization Law of the City of New York. Under Chapter XIII of that law if the tenants wish to contest the landlord's application, they have an opportunity to submit forms showing "any incorrect matter or items contained in the owner's application." R.S.L. Chap. XIII 2. At this point if "there are many tenants involved who are making the complaint or claim, or if the factual situation is very involved, the CAB may determine a hearing is necessary." R.S.L. Chap. XIII 1. See also Rules of the Conciliation and Appeals Board promulgated October 10, 1969.

In this case, since the Landlord's application, the CAB has requested various information from the Landlord, but there is some dispute whether the Landlord has fully complied with those requests and thus whether their application for the hardship increase was ever complete. In any case, as of the date of this opinion the CAB has not granted the Landlord any increase in rent.

On February 6, 1975, the Landlord filed an application for rent increases with HUD. On July 23, 1975, HUD approved rent increases so that the annual rental for Birchwood Towers would be \$3,795,104. The maximum permitted under CAB regulations was \$3,256,288. On September 9, 1975, the Landlord requested CAB to issue the necessary orders to permit the Landlord to collect the HUD approved rents.

On October 22, 1975, HUD adopted a regulation concerning the authority of local rent control laws over HUD projects. 24 C.F.R. § 403 (1975). That regulation provides in relevant part that "HUD will pre-empt the regulation of rents for such projects when the Department determines that the delay or decision of a board, or other authority regulating rents pursuant to state or local law, jeopardizes the Department's economic interest in the project." 24 C.F.R. § 403.5 (1975).

In order for Landlord to have HUD pre-empt the local rent control laws under the above regulation, the Landlord must file an application for increases in rent with HUD and notify the local board, in this case the CAB, of that application. If the local board does not act within 30 days and HUD determines that the delay will jeopardize the Department's interest in the guaranteed mortgagor, HUD issues "a formal certification that it has pre-empted local rent controls as to such rents in order to protect the Department's economic interest in the project. Copies of the certification shall be transmitted to the mortgagor, the local HUD office, the Regional Office, and the board." 24 C.F.R. § 403.6(e). Nowhere in this pre-emption process are the tenants of the HUD projects allowed any opportunity to be heard.

On May 7, 1976, the Landlord requested HUD to issue a certificate of pre-emption pursuant to 24 C.F.R. § 403. On May 26, 1976, HUD advised CAB that it was imperative that CAB render a decision on the Landlord's hardship application or HUD would consider issuing certificates of pre-emption for Birchwood Towers.

On June 29, 1976, CAB advised HUD that the Landlord had not completed his application for hardship increases and further (letter from CAB to HUD, June 29, 1976):

"in the event the owner qualifies for a comparative hardship increase under the provisions of the Rent Stabilization Law, the rent increase granted the owner in any hardship order would be collectible in an amount not exceeding 6% in any one year (above guidelines) with any balance due the owner collectible in succeeding years at a rate similarly not exceeding 6%. Moreover, the Rent Stabilization Law limits the owner to no more than one hardship order in any 36 month period."

On September 1, 1976, HUD issued the certificates of pre-emption and beginning on November 1, 1976, the Landlord sought to collect the HUD approved increases both from tenants signing new leases and, by way of the pass through rider discussed above, from tenants who had unexpired leases as of November 1, 1976.

On October 19, 1976, the Tenants filed the complaint in this action seeking a declaratory judgment pursuant to 28 U.S.C. § 2201 that HUD's pre-emption order was void, and seeking to enjoin the Landlord from collecting the increased rents approved by HUD pursuant to 5 U.S.C. § 701, et seq.

Next, both sides filed orders to show cause returnable November 5, 1976, requesting preliminary injunctions. On November 5 and again on November 12 this Court heard extensive oral argument and then reserved decision. In order to maintain the status quo on November 12, 1976, this Court signed an order consented to by both sides requiring that the plaintiffs pay to their lawyers as escrow agents the difference between the current lease rental or the CAB guidelines rental and HUD approved rents pending the Court's decision in this matter. This order also provides that should the HUD approved rents eventually be upheld, notwithstanding any lease then in effect, the tenants shall have the right to vacate the premises.

I/

The first issue before the Court is the plaintiffs' argument that HUD's pre-emption of local rent control was invalid because the pre-emption regulation, 24 C.F.R. § 403 (1975) goes beyond HUD's Congressionally delegated powers. Due to the recent promulgation of that regulation, the only case that has decided that issue is City of Boston v. Hills, (No. 75-902-C, D.Mass. Sept. 30, 1976), which held that this regulation was consistent with statutory authority and was a necessary and reasonable means of carrying out that authority. Except as modified by our due process analysis below, we adopt the reasoning and conclusion of that case on this point.

II

The plaintiffs further argue that even if the regulation was valid, it was improperly invoked in this case because there was no real conflict between local rent control laws and HUD's rent increases because the Landlord could have achieved the needed increases under the rent control laws. This position is not supported by the facts. First, the Landlord applied to CAB for hardship rent increases in 1974 and has received no action over two years later. Plaintiffs argue that this is because the Landlord has not completed his application to CAB, but the Landlord disputes this. Assuming, however, that the Landlord has not completed his application, there is still a conflict, as CAB admits in its letter of June 29, quoted above, that the maximum allowable increase the Landlord could receive under the Rent Stabilization Law in any one year was 6%. HUD had already authorized a much greater increase than that, and so if HUD, after the due process procedures described below, decides again in favor of pre-emption, then the regulation will have been validly invoked.

III

The plaintiffs argue that even if local rent control is properly pre-empted, the new rents can only apply to tenants whose leases have expired. The Landlord argues that the pass through rider he inserted in leases in 1969 allows him to pass on to all tenants any HUD approved rent increases. The tenants argue that this type of pass through provision is invalid under local rent control laws.

We do not need to decide that issue because if HUD validly pre-empts local rent control, the leases are no longer governed by those laws. Thus, if HUD validly pre-empts the local rent control laws, the Landlord may pass on any HUD authorized increases to tenants with existing leases, with the limitation that as provided in this Court's order of November 12, 1976, all tenants shall have the option to vacate the premises.

IV

The last and most difficult question presented by this case is whether HUD can validly pre-empt local rent control and then allow the imposition of HUD authorized rent increases without affording the tenants who have to pay those increases due process of law. This due process question is best broken down into a three step analysis as follows: (1) is there sufficient government involvement to invoke the due process clause; (2) is the tenants' interest in not having HUD pre-empt the local rent control laws and then increase their rents a constitutionally protected "property interest"; and if so (3) what procedural safeguards does due process require to protect that interest. See Geneva Towers Tenants Org. v. Federated Mortgage Inc., 504 F.2d 483 at 487 (9th Cir. 1974); Note, Procedural Due Process in Government-Subsidized Housing, 86 Harv.L.Rev. 880 (1973).

In the leading Supreme Court cases in the area of the due process clause, the issue of sufficient government involvement has not even arisen as it was clear from the facts that the government had acted.

Thus in Goldberg v. Kelly, 397 U.S. 254 (1970), welfare benefits were being cut off under federal and state programs, and in Board of Regents v. Roth, 408 U.S. 564 (1972) and Perry v. Sindermann, 408 U.S. 593 (1972), a state college was firing teachers. Further, the courts have had no trouble finding government involvement where the state is owning or operating the housing project. Burr v. New Rochelle Municipal Housing Authority, 479 F.2d 1165 (2d Cir. 1973); Escalera v. New York City Housing Authority, 425 F.2d 853 (2d Cir.), cert. denied, 400 U.S. 853 (1970); Caulder v. Durham Housing Authority, 433 F.2d 998 (4th Cir. 1970), cert. denied, 401 U.S. 1003 (1971). The problem arises here because of the nature and structure of the National Housing Act and its amendments. These amendments during 1960's provided for federally subsidized rental housing programs and were passed "in response to growing dissatisfaction with the results that had been achieved by conventional public housing programs; the hope was that private, profit motivated parties could build and operate housing more effectively than the public housing bureaucracies, which were accused of rigidity and inefficiency." Note, Procedural Due Process in Government Subsidized Housing, supra, at 883. See Langevin v. Chenango Court, Inc., 447 F.2d 296, 301 (2d Cir. 1971).

The federal subsidies took several different forms. Among the more important were the § 221(d)(3) below market interest rate mortgage program, 12 U.S.C. § 1715 1(d)(3), the § 236 interest reduction payments program, 12 U.S.C. § 1715 z-1, the § 202 direct loans at below market interest rates program, 12 U.S.C. § 1701 q, and a "Rent Supplement Program", 12 U.S.C. § 1701 s, which allows HUD to make direct payments to the landlords of projects involved in the above programs so that eligible low income individuals and families can afford the rentals of those projects. Finally, there is the program involved in this case, the § 207 program, 12 U.S.C. § 1713, which allows HUD to guarantee the mortgages of projects.

The leading cases in this Circuit involving these programs and the due process clause are Langevin v. Chenango Court, Inc., 447 F.2d 296 (2d Cir. 1971), and Grace Towers Tenants Assoc. v. Grace Housing Development Fund Co., Inc., 538 F.2d 491 (2d Cir. 1976). Chenango Court involved a § 221(d)(3) program where the government had authorized the landlord to increase rents without any due process guarantees to the tenants. The Second Circuit held that because HUD had merely "allowed the landlord to institute an increase upon the termination of existing tenancies, as the landlord would have been legally free to do but for its regulatory agreement with the FHA", therefore this was not government action and the due process clause was not involved. Chenango Court, supra, at 301.

In Grace Towers the project was not only subsidized by a below market interest rate mortgage under § 221(d)(3), but also received rent supplementation payments for 10% of the tenants pursuant to 12 U.S.C. § 1701 s. Here again, HUD authorized and the landlord imposed rent increases. The Court did not decide the issue of whether there was sufficient government involvement, but rather held that even if there was, the tenants had "no legitimate claim of entitlement upon which due process protections may attach." Grace Towers, supra, at 495. Thus, it is not clear whether the programs in Grace Towers constitute sufficient government involvement to invoke due process protection.

In our case, however, the government involvement was through a § 207 program where only the mortgages were guaranteed. Inasmuch as the program is even less intrusive than the § 221(d)(3) program in Chenango Court where the government actually subsidizes the mortgages so that they bear below market interest rates, it is clear that the § 207 program standing alone in this case would be insufficient government involvement to invoke due process protection. In fact, this Court has so held in Klein v. Department of Housing & Urban Development, 416 F.Supp. 615 (E.D.N.Y. 1976).

However, in this case HUD did more than simply "allow" the landlord to raise rents. HUD pre-empted local rent control laws pursuant to 24 C.F.R. § 403 (1975). It is this positive action which distinguishes this case from Chenango Court and

Klein. In fact, the following language from Chenango Court seems to say that where there is local rent control and pre-emption the due process clause is invoked; Langevin v. Chenango Court, Inc., 447 F.2d 296 at 301 (2d Cir. 1971)

(emphasis added):

"The due process clause does not forbid Congress from deciding, if it wishes, that federal assistance to 'private industry in providing housing for low and moderate income families and displaced families' in the form of insurance and purchase of low interest mortgages need not be conditioned on the granting of an evidentiary hearing with respect to rent increases, but, in the absence of some governmental scheme of rent control, whether general or particularized, may instead be confided to the decision of the experienced staff of the FHA, which has been instructed to subject rent increase applications to thorough investigation to the end that tenants should not be imposed upon."

Thus, we hold that there was sufficient government involvement here to invoke the due process issue.

The next step in our analysis is whether the tenants' interest in not having HUD pre-empt the local rent control laws and then allowing the Landlord to increase their rents rises to the level of a constitutionally protected "property interest."

The Supreme Court in recent years has greatly expanded the concept of constitutionally protected property. In Goldberg v. Kelly, supra, the right to welfare benefits was held to be property. In Goss v. Lopez, 419 U.S. 565 (1975), a pupils interest in attending school was held to be property. In Bell v. Burson, 402 U.S. 535 (1971), the right to a driver's license was given due process protection. Unfortunately the Supreme Court has not ruled on the question of whether the right

to low rents in a National Housing Act project is such a right. Some courts have held there was such a right. Marshall v. Lynn, 497 F.2d 643 (D.C.Cir. 1973), cert. denied, 419 U.S. 970 (1974); Geneva Towers Tenants Org. v. Federated Mortgage, Inc., 504 F.2d 483 (9th Cir. 1974). Other courts have held there was no such right. Grace Towers, supra; Hahn v. Gottlieb, 430 F.2d 1243 (1st Cir. 1970); Paulsen v. Coachlight Apartments Co., 507 F.2d 401 (6th Cir. 1974); People's Rights Organization v. Bethlehem Associates, 356 F.Supp. 407 (E.D.Pa.), aff'd 487 F.2d 1395 (3d Cir. 1973).

Our decision, of course, is controlled by the recent Second Circuit opinion in Grace Towers to the extent that it applies. The key language in that case is as follows, 538 F.2d at 494 (quoting Board of Regents v. Roth, 408 U.S. 564, 577) (emphasis added):

"These tenants could not reasonably expect that they were to be forever immunized from rent increases; nor, could they legitimately expect an opportunity to participate in a decision-making process which Congress confided to the experienced discretion of the Secretary. Without at least some Congressionally prescribed restrictions on the agency's action or a practice giving rise to a legitimate expectation, we are constrained to find that plaintiffs' interest in the benefit of low-cost housing does not rise above 'an abstract need or desire for it'"

As our case involves only § 207 guarantee of mortgages which is less intrusive than the programs in Grace Towers, we must hold that there was no property interest involved here unless this case fits into the exception spelled out in the emphasized language above. This language of a "practice giving rise to a legitimate expectation", presumably

is derived from the Supreme Court cases of Perry v. Sindermann, 408 U.S. 593 (1972), and Board of Regents v. Roth, 408 U.S. 564 (1972). In Roth the Supreme Court held that a non-tenured teacher who had not been rehired did not have a sufficient property interest in continued employment to invoke due process. In Sindermann the Court held that a non-tenured teacher could invoke due process protection because "the respondent claimed legitimate reliance upon guidelines promulgated by the Coordinating Board of the Texas College and University System that provided a person, like himself, who had been employed as a teacher in the state college and university system . . . some form of job tenure." Sindermann, supra, at 600. The distinguishing characteristic between Roth and Sindermann was that the teacher in Sindermann legitimately relied on guidelines, and thus had the expectation that he would not be fired without due process being followed.

Similarly, in this case the tenants had legitimately relied on the Rent Stabilization Law and had the expectation that their rents would not be increased without the procedures provided for in that law being followed. To use the words of the Second Circuit, the procedures provided for in the Rent Stabilization Law were "a practice giving rise to a legitimate expectation", Grace Towers, supra, at 494. Therefore, when HUD pre-empted the local rent control laws, it destroyed the tenants reliance on those laws and shattered their legitimate expectation that the procedures provided for

would be followed before their rents were increased. Therefore we hold that HUD could not pre-empt the Rent Stabilization Law without providing the tenants with due process protections.

Having held that due process was invoked here, we come to the third step in our analysis, namely, what procedural safeguards does due process require in this case. In cases involving rent increases such as this one, the Second Circuit has held that full adversary-type hearings are not required. Burr v. New Rochelle Housing Authority, 479 F.2d 1165 (2d Cir. 1973); see Grace Towers, *supra*, at 495. Rather, what is required is a balancing of HUD's interest in having a summary procedure against the interest of the tenants in disputing the landlord's application for pre-emption. Further, this Court is aware that the purpose of the National Housing Act amendments was "to promote the construction of housing by private enterprise", Langevin v. Chenango Court, Inc., 447 F.2d 296, 301 (2d Cir. 1971). Thus there appears to be no basis for overly burdening HUD and the private landlord with extensive procedures so that private enterprise will be discouraged from investing in these projects. In reaching the proper balance we note that in response to the decisions of a number of Circuits that due process was required in raising rents at various National Housing Act projects, HUD has promulgated a regulation, 24 C.F.R. 401 (1975), that provides for some due process protections before rents can be increased under certain programs including the § 221(d)(3) programs involved in

Chenango Court and Grace Towers. Unfortunately this regulation does not apply to the § 207 program involved here for then this whole controversy might never have arisen.

In any case, we find in § 401 some evidence of what HUD finds not unduly burdensome. Under that section the landlord must notify the tenants thirty days before applying for rent increases and during that time the tenants can inspect the landlords application and material in support thereof and submit written comments on the proposed increases to HUD. No oral presentation is provided for. This result is similar to the plan laid down in Burr v. New Rochelle Municipal Housing Authority, 479 F.2d 1165, 1170 (2d Cir. 1973), where the Court held as follows:

"Notice of a proposed increase in rent shall be served well in advance of the date for the increase. Opportunity for filing written objections shall be given. There need be no opportunity for oral presentation. The tenants or their representatives shall have the right to submit any material they consider relevant to disprove the need for the rent increase. Finally, the Review Board upon reaching a decision shall issue a statement outlining the reasons for either approving or rejecting the requested rent increase. The tenants may of course be represented by counsel."

A similar result has been reached by several courts. See Caramico v. Secretary of H.U.D., 509 F.2d 694, 701-702 (2d Cir. 1974); Keller v. Kate Maremount Foundation, 365 F.Supp. 798 (N.D. Cal. 1972), aff'd 504 F.2d 483 (9th Cir. 1974).

In reliance on Burr and Caramico we find that in order for HUD to pre-empt the local rent control laws involved here and to allow rent increases, it must give the tenants an opportunity to inspect the landlord's application and to submit to HUD written objections or reasons why HUD should not pre-empt local rent control and any material in support thereof. After considering these submissions, HUD shall, in a written decision, outline why pre-emption is necessary or unnecessary.

If HUD finds that pre-emption is unnecessary then the money being held by the escrow agents shall be returned to the tenants who paid it. On the other hand, if HUD finds pre-emption necessary, then the escrow agents shall pay the money to the landlord. Keller v. Kate Maremount Foundation, 365 F.Supp. 798, 804 (N.D. Cal. 1972), aff'd 504 F.2d 483 (9th Cir. 1974); Ponce v. Housing Authority of County of Tulare, 389 F.Supp. 635, 656 (E.D. Cal. 1975). Further, if HUD finds pre-emption necessary, then the tenants shall pay the HUD authorized increases with the option contained in this Court's Order of November 12, 1976, to vacate the premises. In the meantime, that Order remains in effect.

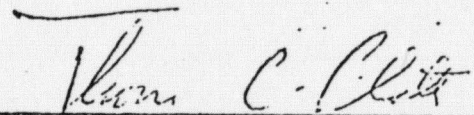
Finally, the landlord also moves for dismissal of the plaintiffs' sixth and seventh causes of action and for an order under F.R.C.P. 23(b)(1)(A) so that this action will be maintained as a class by all the tenants of Birchwood Towers. Our decision on the due process issue should be dispositive of this case so we do not reach the question of dismissing the

sixth and seventh causes of action.

As for the class action motion, the Landlord has requested class action treatment under Rule 23(b)(1)(A) which provides for class action where there is the risk of inconsistent verdicts. However, it is not clear that such a risk exists, but the Court does think that this is a proper class under 23(b)(3). The Court is aware of the suggestion in the Manual for Complex Litigation § 1.401 (1975) that suits for determination of the constitutionality of a federal statute or regulation should not be treated as a class action. Compare Ihrke v. Northern States Power Co., 459 F.2d 566, 572 (8th Cir. 1972), with Fujishima v. Board of Education, 460 F.2d 1355 (7th Cir. 1972), and Hammond v. Powell, 462 F.2d 1053 (4th Cir. 1972). However, as this case also involves the issues of whether there is in fact a conflict between the HUD authorized rents and the CAB authorized rents and whether the pass through rider in the leases were valid, the class action method would appear to be a superior method for handling this action. Therefore, the Court makes the following findings: the class of tenants in this case is so numerous that joinder of all members is impracticable, there are questions of law and fact common to the class, the claims and defenses of the representative parties are typical if not identical with the class, and the representative parties will fairly and adequately protect the interests of the class. Also the Court finds that the common questions of law and fact predominate

over any individual claims and that a class action is the superior method for a fair and efficient adjudication of the controversy. The class shall be defined as tenants of the Birchwood Towers from September 1, 1976 to the date of this opinion. For a similar result with similar facts and findings in another tenants suit, see Ponce v. Housing Authority of the County of Tulare, 389 F.Supp. 635 (E.D.Cal. 1975).

Since it is the Landlord who has requested the class action, they must submit, for approval, to this Court within two weeks a proposed notice to the class members which should include the requirement of Rule 23(c)(2)(A), that the class members can request exclusion within 30 days of service. Further, the Landlord shall, within 2 weeks of this Court's approval of the notice to class members, serve all class members with that notice.



U.S.D.J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

ARGO, :

-against- :

76 C 1969

HILLS, :

Defendant. :

-----X

United States Courthouse
Brooklyn, New York

July 28, 1977
2:00 o'clock P.M.

B e f o r e :

HONORABLE THOMAS C. PLATT, U.S.D.J.

CIVIL CAUSE
FOR
CONFERENCE

Paul Klimaszewski
Acting Official Court Reporter

1 Appearances:

2 MARC KAHN, ESQ.,
3 Attorney for Plaintiff

4 NEAL M. GOLDMAN, ESQ.,
5 Attorney for Defendant Landlord

6 DENNIS R. KRASNER, ESQ.,
7 Attorney for Defendant Conciliation & Appeals Board

8 RODGER C. FIELD, ESQ.
9 Assistant U.S. Attorney
10 Attorney for Defendant HUD

11 Also Present:

12 Barney Rosenstein, Esq.

1 THE CLERK: Civil call for conference: Argo
2 versus Hills.

3 THE COURT: Good afternoon, gentlemen.

4 MR. GOLDMAN: Good afternoon, your Honor. Your
5 Honor, I make the application on application on behalf
6 of the landlord defendant. The purpose of my applica-
7 tion is to get an outside time limit fixed on the
8 consideration by the Department of Housing and
9 Development of the landlord's application for recon-
10 sideration of the preemption decision.

11 If you may recall, in January in your order,
12 you told them to reconsider the landlord's application
13 in light of any submissions the tenants desired to
14 make in opposition. Now, on March 4th we were here
15 to get an order signed for scheduling, which you
16 signed. That order provided for submissions by
17 April 4. On the 15th of March, the Government appealed
18 from your order of January 13th. On April 7th, the
19 tenants filed their submissions with the New York area
20 office.

21 On April 20th, the landlord filed its response
22 within the New York area office. In mid-May we were
23 informed by the Assistant United States Attorney,
24 Mr. Parkerton, that the area office had concluded its
25 review and forwarded its recommendations to Washington.

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2 On May 23rd, the Government withdrew its
3 appeal, without prejudice. In the week or so between
4 that time and the end of May, there was some
5 correspondence between the tenant's attorney and our
6 office, with the regional office here in New York,
7 relating to a review of the submissions that we made.

8 It is now the end of July and we have
9 conflicting rumors, I would say, or at least advice
10 from HUD, as to the status of the application for
11 reconsideration. My adversary, plaintiff's counsel,
12 has informed me this morning that the amount of
13 money in the escrow account to date is in excess of
14 \$75,000. Now, that money that the tenants have been
15 paying into escrow, pursuant to the escrow agreement
16 we had arranged, and which continued, and from which
17 the landlord has no benefits because the things are
18 in limbo in Washington.

19 For this reason, I think it appropriate that
20 we just put an outside time limit now on the time
21 that HUD will take to deliver an order or its
22 decision to you, and to us, so that we can move this
23 case along and if its goal -- if it's going to go
24 to the Court of Appeals, let's get it there as
25 quickly as possible. I think no purpose is served

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2 and everybody is harmed by permitting the matter to
3 remain in limbo.

4 I have left the time limit open on the
5 proposed order, but I would suggest, your Honor,
6 we try to do it as quickly as possible.

7 THE COURT: Well, now clue me in now. Is the
8 question before HUD whether they want to preempt or
9 is the question before HUD whether or not the original
10 increases were fair under the circumstances.

11 MR. GOLDMAN: No, your Honor. The question
12 before HUD has nothing to do with the amount of the
13 increase. The question before HUD as you defined it
14 in your January 13th order is whether or not preemption
15 is necessary, in light of the landlord's application
16 and the tenants' submissions, and the HUD preemption
17 regulations.

18 THE COURT: I thought HUD had preempted.

19 MR. GOLDMAN: They had --

20 THE COURT: Does that comply with due process?
21 We said they should preempt only after due process,
22 which enabled -- which would enable the tenants to
23 set forth their case.

24 MR. GOLDMAN: That's correct.

25 THE COURT: And now they have had that

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2 mini-hearing, if you want to call it that, and they
3 have before them I feel the question as to whether
4 given all of the facts before them, whether they
5 should preempt.

6 MR. GOLDMAN: Correct. The reason may have
7 something to do with local politics and it may not.
8 There was an article in the New York Times on the
9 20th about Mayor Beame's trip to Washington and his
10 visit with the Assistant Secretary of HUD, Simon,
11 and reconsideration of certain applications for --
12 presumably with respect to projects other than ours.

13 I spoke to Washington to yesterday and I was
14 advised that the project application has been sent
15 back to New York for reconsideration, for projects
16 other than the ones involved in this case, and my
17 adversary, who is capable of speaking for himself,
18 is under the impression ours is sent back.

19 In any event, we don't really know what the
20 status of it is as of last week, or so we were
21 informed, that they had all of the papers in
22 Washington. My adversary believes that they are here
23 in New York.

24 We really feel that we need some kind of
25 outside date on them to finish up doing what you
wanted them to do.

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2 THE COURT: I don't want to seem to be
3 facetious, and I suspect maybe the party that I am
4 about to quote would take the position that he was
5 also being facetious, when he said it, but
6 Mr. Justice Christon as he used to say when he sat
7 on the Supreme Court as distinguished from the
8 Appellate Division, do you want the answer now, an
9 immediate answer, and if you do, the answer is "No."
10 But we --- aren't I interfering with their freedom
11 of ability to make an appropriate decision if I put
12 a limit on the time, until such time as you can come
13 in here and say it's being arbitrary and capricious
14 that they're not making a decision.

15 MR. GOLDMAN: I think that time has come,
16 your Honor. They have had it now since --

17 THE COURT: What date?

18 MR. GOLDMAN: Sometime in April, all of the
19 materials that both parties and both sides, or anyone
20 that cared to file.

21 THE COURT: Wouldn't I have to determine,
22 before making such a determination, have to determine
23 what their caseload was and what type of backlog they
24 had, and all that type of thing?

25 MR. GOLDMAN: As far as I know, this is the

1 only one there.

2 THE COURT: You don't know what goes on in
3 HUD, do you? I don't.

4 MR. GOLDMAN: No, I prefaced my remark by
5 saying, as far as we know. But, we can get no
6 statement out of the people that we have been speaking
7 to down there on any official level, or unofficially.
8 All we get is that they have seen the papers.

9 THE COURT: It's like you were transporting
10 yourself into a temporary -- as if you were now
11 before a three-judge court of appeals and saying
12 that we can't get a decision from Judge Platt on this
13 case and we think he is being arbitrary and capricious,
14 because he has taken more than 60 days to decide it.
15 Judge Kauffman or Mulligan or one or more of the
16 others might say, "Do you know what Judge Platt's
17 motion backlog is," and you say, "As far as I know,
18 that's the only motion he's got before him."

19 MR. GOLDMAN: Your Honor, I would be very
20 hesitant to go before the Court of Appeals to try to
21 get them to direct any District Judge to make a
22 decision, because although I may not have been aware
23 of the source, I'm at least aware of the aphorism
24 you quoted on Judge Christon, but I think this is
25 different situation. Now, the administrative --

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2 THE COURT: Mr. Justice Christon would say
3 that at the time he was quoted he was being facetious,
4 so don't attribute that quote to --

5 MR. GOLDMAN: I wouldn't attribute it to him,
6 at least not in writing, and I would ask the reporter
7 to keep that in mind. We have had a lot of interest
8 at this date here --

9 THE COURT: So does everyone, as far as the
10 respondents, emotion comes in here and I am not
11 going to say that you are not entitled to relief,
12 but I'm saying the normal case is when you get this
13 kind of relief, it's just like Judge Pollock's
14 situation on the airplane, where the Port of
15 Authority has been sitting for a year and two months
16 and the Court of Appeals has remanded it for a
17 hearing before Judge Pollock to determine whether
18 or not the Port of Authority unreasonably acted in
19 delaying their decision with respect to the Concorde.
20 Isn't that the only basis on which I can do that,
21 that's my only question.

22 MR. GOLDMAN: I don't believe so, your Honor.
23 Although since the United States Attorney is present
24 and one hopes that he does have some information that
25 may enlighten us on the subject matter going on in

1 Washington, we can resolve the disputes, but apart
2 from that, I do not find, I submit to you, that it is
3 not inconsistent with your order of January 13, 1977,
4 for them to make the decision in a reasonable time
5 after the submissions to them.

6 THE COURT: I agree, I am not arguing your
7 point, but aren't we arguing abuse of discretion or
8 arbitrary and unreasonableness, as long as they can
9 argue that they are acting with reasonable dispatch,
10 do I have the power to interfere, let's put it that
11 way.

12 MR. GOLDMAN: I think you have the power and
13 the discretion to put an outside time limit on this.

14 THE COURT: Without inquiring as to the facts,
15 without having a hearing as to the fact?

16 MR. GOLDMAN: The facts are --- I'm sorry, yes,
17 without inquiring into the fact of what they have to
18 do with respect to this, simply because if you wish,
19 I'll put it under oath, but my representation is that
20 the matter has been in Washington for consideration
21 by the appropriate official for at least two months
22 now, from about this time in May when Mr. Parkerton
23 informed me of the fact that they --

24 THE COURT: Well, that's 60 days. That's
25 just regarded as a general guideline.

1 For example, for this Court, it has 60 days
2 in which to make a decision, and I believe that's
3 true in the State courts, and that provision says
4 that if you don't have a decision within 60 days,
5 you can request an immediate decision and so forth.
6 But, I know back in the days of when I was in private
7 practice, I don't think I ever had the temerity to
8 do it, but maybe some people do.

9 MR. GOLDMAN: I guess I am taking that risk,
10 advisedly in this matter. Perhaps you would ask it
11 of them, and not of you. I think that not only
12 my clients, but the tenants in these buildings are
13 entitled to have their status resolved.

14 THE COURT: Don't misunderstand me, I agree
15 with the premise, the question is as a matter of law,
16 do I have the power to order them to render a
17 decision, unless it clearly appears that they are
18 abusing their power of discretion, authority and so
19 forth.

20 Isn't it then almost an identical parallel
21 except for dealing with a Federal agency to the
22 inquiry by Judge Pollock currently going on as to
23 whether or not the Port of Authority is abusing its
24 discretion by sitting for a year and umpteen months
25 on the Concorde application.

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2 MR. GOLDMAN: I think it may be parallel, but
3 it is mildly, and significantly different in that
4 until the Court of Appeals came down and told
5 Judge Pollock to consider those questions, we did
6 not have the question of an order of the Court
7 directed to a Federal agency saying, "Decide."
8 Since you did not put any time limit in your initial
9 order to say decide within a reasonable time, and
10 I must concede perhaps that the question of
11 reasonability is an issue here, but I would urge
12 further, on the basis of --

13 THE COURT: At what point would you say --
14 in other words, what is the outside date that you are
15 going to suggest. At what point would you say it
16 would necessarily become so arbitrary and unreasonable
17 that I would have to find it as a blanket matter.

18 MR. GOLDMAN: I would submit we have passed
19 that point.

20 THE COURT: No, no; not 60 days.

21 MR. GOLDMAN: It's not 60 days since the
22 matter was submitted, it's more than 60 days with
23 the entire record, and with the recommendation which
24 was forwarded to us for review.

25 THE COURT: That is a review. It, like the

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2 Court of Appeals, has the review. That they have,
3 a self-imposed limit of 60 days or something of that
4 nature in criminal cases. I am not sure what it is,
5 but there is an imposed limit. If they don't make
6 it, there is no sanction.

7 You are asking, in effect, that I impose
8 sanctions.

9 MR. GOLDMAN: One of the reasons why I left
10 the date blank and didn't come in here waiving
11 today or tomorrow or the next week, was the fact
12 that I did feel, despite the fact that we have had
13 this 60 days in Washington and that there should
14 have been produced an answer to this application
15 before this, that they are entitled, having now
16 received formal notice of my displeasure with them,
17 at refusing to come down with any kind of an answer,
18 a period of time to respond, I will plead a
19 acknowledged ignorance of the inner workings of the
20 HUD administrative process, but I don't think
21 anybody requires more than an additional 15 to 30
22 to produce the kind of response that your Honor
23 wanted.

24 THE COURT: Do you want to come back and
25 work for me for a while in my chambers; I've got

1
2 pretty weighty motions back there.

3 MR. GOLDMAN: I think there is some issues,
4 I suppose, that requires more than that time. But,
5 I think both sides in this case, the tenants and
6 the landlord have given HUD a very complete record,
7 that the gentleman in New York who is initially
8 charged with reviewing that record and making
9 recommendations is a sophisticated and knowledgeable
10 individual whose recommendation, whatever it is and
11 I do not know what it is, is undoubtedly one that is
12 complete and all of the matters that were sent to
13 him, and that they really don't have to start from
14 scratch or recreate it in Washington, to produce
15 the kind of decision that you wanted from them.

16 THE COURT: I understand what you're saying.
17 I'll hear from your adversary, but I'm saying that
18 something is arbitrary and unreasonable, without
19 really having a complete exposition of the facts at
20 this point. I think that's what the Court of Appeals'
21 message is to Judge Pollock when they said get a
22 complete exposition of why the Port Authority
23 has been dragging their feet, quote, dragging their
24 feet. They didn't say it.

25 MR. GOLDMAN: Your Honor, as a practical

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matter I am going to be -- my clients and the plaintiffs are going to be punished for the indulgences of HUD, because of the fact, the practical fact of vacation time during the month of August and the inability, presumably, to have such a hearing until sometime in September by which time we'll have another 45 days with a lot more money pouring into the escrow account and the risk of default is growing apace, and the tenants are deprived of monies that may rightfully could be theirs.

THE COURT: I understand what you are saying.

MR. GOLDMAN: If I had come to you a month ago and we held that hearing, perhaps, now we could have an answer and I indulged them and now I am regretting it.

THE COURT: I could possibly give you the hearing at the end of August. I can't conceive of it being a long hearing, we'll get the fellow up here and he'll tell us what is causing the delay. Wouldn't have to do that?

MR. GOLDMAN: Perhaps the U.S. Attorney has some information on that subject.

THE COURT: Let's hear from the fellow from HUD itself. Is anybody from HUD here?

1 MR. KAHN: No, your Honor.

2 THE COURT: Do you represent HUD?

3 MR. KAHN: No. I represent the plaintiff.

4 MR. FIELD: Your Honor, I'm the assistant
5 United States attorney. Unfortunately, as Mr. Goldman
6 knows, Mr. Parkerton, who was handling this case on
7 behalf of the United States Attorney, is on vacation
8 and was unable to come today and asked me to fill in,
9 so I do not have the detailed knowledge of it.

10 THE COURT: Have you talked to the people in
11 HUD?

12 MR. FIELD: I didn't speak to them. I have
13 been able to speak to Mr. Parkerton and that's all.

14 THE COURT: Well, are the telephones not
15 working upstairs this morning?

16 MR. FIELD: Well, your Honor, I was actually
17 trying to understand the procedural posture of this
18 case.

19 THE COURT: Let me see if I can help you
20 understand it. They're waiting on the decision from
21 HUD and I'm sure they're tell you who it is and
22 couldn't you call them up and say what the tenants
23 are disturbed about, as to the length of time it has
24 been taking, and what the story is?
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MR. FIELD: With respect to that, I think I can offer some guidance to the Court.

I am informed that while HUD would on the record oppose such an order proposed by the landlord, in that it compels HUD to take certain actions which HUD does not believe it is required to take and having said that, it is appropriate that there be some final disposition to the case, that I do believe --

THE COURT: Wait a minute now. If HUD doesn't feel it must either grant or deny, I mean preempt or say it's not going to preempt in this case, is that really what they're saying?

MR. FIELD: Your Honor, it's my understanding that HUD, respectfully, believes there should be an appellate decision on this matter. In favor of getting a finding in an appealable order in order to bring it to the Circuit Court.

THE COURT: Maybe you do. So, you withdrew your notice of appeal?

MR. FIELD: Your Honor, it's my understanding it was the plaintiff's appeal that was withdrawn.

THE COURT: Your time to appeal has long since gone by, ten days, and 30 days for inexcusable delay.

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2 MR. FIELD: It's my understanding, your Honor,
3 that what is deemed appropriate is that there be an
4 order of the Court in this case to appeal. It's my
5 understanding the reason the original appeal was
6 withdrawn is that there was at that time, no
7 appealable order.

8 Therefore, the reason is that which I explained
9 as I said earlier, while we oppose it on the record,
10 the landlord's order, we still deem it appropriate --

11 THE COURT: Well, what else could have been
12 done? All I did was say if HUD was going to exercise
13 preemption before, which it was afforded to exercise,
14 to hold a due process hearing and then that hearing
15 would comply with certain due process procedures
16 which they did, apparently.

17 Now, they have before them the question of
18 whether or not they wish to preempt or not, and what
19 is there to appeal? Certainly they can't say now I
20 was wrong in ordering it, and before they appeal,
21 they complied with the due process because they have
22 gone ahead and complied with that portion of the
23 order. What is there really to appeal?

24 MR. FIELD: Your Honor, you'll have to forgive
25 me.

THE COURT: Forgive me, I'm trying to find out

1 what constitutional roadblocks are here?

2 MR. FIELD: There is, for example, the issue
3 of the written statement that HUD has, that the
4 Court decision said, it was required by due process
5 that --

6 THE COURT: You mean they have to give a
7 written statement with reasons?

8 MR. FIELD: That's correct, your Honor.

9 THE COURT: Well, then, that portion of the
10 decision has been extant now since some time in
11 April and they're trying to appeal that and their
12 time to appeal that portion has gone by.

13 MR. FIELD: Your Honor, I believe our position
14 is that there was no appealable order and there isn't
15 yet, and this is why it is desirable to get an
16 order in the case to appeal.

17 THE COURT: What type of order do they want?

18 MR. FIELD: I would suppose the order that is
19 proposed by the landlord would be an order of the
20 Court, promulgating its decision in the January
21 decision.

22 THE COURT: In other words, you want me to
23 go ahead and enter the order?
24
25

1 MR. FIELD: Your Honor, as I said, on the
2 record, we feel we have to oppose that, because
3 it does require us to do things that -- excuse me.
4 It requires us to do things we feel is not necessarily
5 required to do.

6 THE COURT: What you are suggesting is that I
7 go ahead and enter the order, and then they will
8 take an appeal from it. Is that what they might
9 like me to do?

10 MR. FIELD: That would be appropriate, that
11 would be one way of resolving the issue. We
12 wouldn't indicate that the landlord's attorney did
13 extend the time period, and we would ask for a 60-day
14 time period in which to prepare and take action on
15 this.

16 MR. KAHN: May we be heard?

17 THE COURT: Yes.

18 MR. KAHN: We represent the tenants, of course,
19 and we would like to see a decision made by HUD as
20 well. We totally fail to understand the Government's
21 position on the matter, insofar as they filed a
22 notice of cross-appeal, in which they appealed from
23 the order.

24 THE COURT: Did they withdraw it?

25 MR. KAHN: Yes, on May 23rd, Mr. Parkerton

1 signed the withdrawal. So, we have your order of
2 January 13th which they appealed from, and withdrew,
3 and of course, we have your subsequent order of
4 March 4th, in which you referred to your order and
5 opinion of January 13th, and so forth. There was
6 an appeal from that order, and I have no idea why
7 they're really looking for the time, which has, in
8 fact, long since --

9 THE COURT: They say if my order didn't direct
10 them to file such notice giving their reasons, I said
11 -- all I said was that prior to preemption, they must
12 among other things, file such a notice with reasons,
13 I mean file such a statement with reasons.

14 MR. KAHN: Your Honor, the decision which I
15 have in front of my says, on page 17, "After
16 considering the submission, HUD shall in a written
17 decision, outline why preemption is necessary or
18 unnecessary."

19 THE COURT: That was part of the due process.
20 What they're saying is that doesn't compel them to
21 make a decision one way or the other, which I
22 suppose, is true. They don't have to preempt and at
23 the moment, they have taken the position as I see it,
24 that the longer they delay there is no preemption.

25 MR. KAHN: That may be, your Honor, but our

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2 understanding is different from what's happening
3 in Washington. We know there is a new administration
4 in Washington; Mr. Simon is a new Assistant Director
5 for Housing and he has a new staff of people in his
6 office, and we understand that HUD is reconsidering
7 the entire preemption program, and whether or not
8 they want to continue to exercise its authority over
9 the old jurisdiction, and whether or not they want
10 to exercise the authority in this particular case,
11 as well as many other cases. We understand they'
12 studying the question with an eye towards coming to
13 some sort of a conclusion early in the fall, which
14 may explain why they haven't made a decision in the
15 case.

16 I don't know what the number of backlogged
17 cases is. They may very well have a backlog, but I
18 do know, considering their entire policy with respect
19 to the rules and the new administration taking a
20 close look at it, we would like a decision, and we
21 believe our position is that this Court has issued
22 two orders, one of January 13th and one of March 4th,
23 from which --

24 THE COURT: I didn't direct them to preempt.

25 MR. KAHN: No, you did not, your Honor.

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2 THE COURT: And what we were doing in essence
3 is saying that you must preempt or not preempt within
4 a given period of time, and I don't know as that's
5 proper. Theoretically, isn't this -- I get right back
6 to what I was talking to your adversary about, the
7 landlord's counsel in a sense, a moment ago; isn't
8 this an unwarranted interference by a Federal judge
9 into an agency's action, and that should not be until
10 it becomes abundantly clear that it is arbitrary and
11 unreasonable.

12 MR. KAHN: Yes.

13 THE COURT: Then how can I say that it is
14 arbitrary and unreasonable and make a decision one
15 way or the other, because at the moment as things
16 stand right now, there has been no preemptions.

17 MR. KAHN: I don't know that. Your Honor,
18 could, frankly certainly, and not without a hearing,
19 determine as to what the backlog is and what the
20 factors are, as with the case before Judge Pollock --

21 THE COURT: It's a very troublesome thing.
22 When you set up these agencies, you gave them power
23 to get these things done and you have to give them --
24 you can't have the Court running them, supervising
25 all of their operations, which is really what you're

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2 asking.

3 I suppose I could take the Government's
4 position, that they, in substance, say 60 days and
5 that 60 days is better than nothing.

6 MR. GOLDMAN: Your Honor, if I understand
7 what the Government is saying, and I believe I do
8 since I spoke to Mr. Parkerton on a number of times,
9 the Government's position seems to be that they're
10 not going to decide, ever, because they do not accept
11 the Court's analysis on the due process question, and
12 they will not decide. They want to go to Court of
13 Appeals on that issue.

14 Now, I have attempted to persuade Mr. Parkerton
15 that the best way to get to the Court of Appeals is
16 to get a final judgment through a hearing, and we'll
17 go through to the Court of Appeals, but I have not
18 been terribly persuasive as I repeated it yesterday
19 on the phone to Mr. Field, through Mr. Parkerton.
20 Every view seems to be the same.

21 I don't understand that position. I don't
22 think -- it doesn't strike me as being very sensible
23 in light of the public position stated by Mr. Simon
24 about the whole attitude towards preemption, but be
25 that as it may, I think we could move this case
towards a final judgment much more rapidly one way

1 or the other, if we can enter the kind of order that
2 we are seeking today.

3 I would make a brief comment on the discussion
4 that you had with my adversary concerning the effect
5 of the January order. Of course, you wrote the
6 order and you knew what was in your mind, but I did
7 not read that order to say that preemption did not
8 occur. I read your order to say that the tenants
9 are entitled to be heard on the issue of preemption,
10 and the language on page 17 of your decision is such
11 the way I read it, that they are to reconsider their
12 prior grants of extensions and reaffirm or disaffirm
13 in light of the tenants' comments.

14 Now, the implication, of course, is that there
15 hasn't been preemption, but it's suspended until we
16 get the kind of hearing and decision that your Honor
17 wants.

18 THE COURT: I don't know whether we can cross
19 that bridge. I mean, I said in effect, as I remember
20 it, I don't have the thinking that closely in mind,
21 but I think in effect I said the prior attempted
22 preemptions were violative of due process. If I'm
23 correct in that, then it was a violation of
24 constitutional rights and that would mean the process
25 would start anew and it did go anew, and they now

1 have the material before them. They can preempt or
2 not preempt, and yet, don't they have a third option
3 of doing nothing?

4 MR. GOLDMAN: I don't think that option is
5 open to them, and I would disagree with Mr. Kahn on
6 that point. I think that your order was not
7 discretionary, it was not prefertory; your language
8 was mandatory. You told them to decide and let us
9 know what the decision is, with reasons. I think
10 that's the fact that --

11 THE COURT: Let's go back, before last year,
12 a year ago November, whenever it was that they made
13 their preemption. If they had anticipated, on the
14 basis of the decision to be made, that a minimal
15 due process hearing was required and they asked for
16 proper notice and asked for the tenants' figures and
17 the landlord figures and then sat on the problem,
18 between that date and this, do you think you'd have
19 the right to come into Federal Court and ask that
20 they be compelled to hand a decision whether they're
21 going to preempt or not preempt?

22 MR. GOLDMAN: On that basis, I think --

23 THE COURT: No, I think probably not. The
24 only basis you are here, frankly, is because of the
25 escrow account, to which they agreed.

1
2 MR. GOLDMAN: I respectfully disagree, on
3 the basis that you said to us earlier, on the basis
4 of the situation involving Judge Pollock and the Port
5 Authority.

6 THE COURT: But that has to go back to the
7 arbitrary and unreasonableness of the --

8 MR. GOLDMAN: I would point out that the U.S.
9 Attorney has not said that a time limit would be
10 unreasonable, or that they are too backed up so that
11 they can't --

12 THE COURT: They asked for a time limit of
13 60 days.

14 MR. GOLDMAN: They want 60 days? I would
15 rather there be only 30 days, if they are going to
16 do anything, let's do it, because after 60 days they
17 would then have another 60 days to appeal, and we
18 will be pushed back to around Christmas with that
19 escrow order going apace, or the escrow account, I
20 should say.

21 MR. KAHN: Can I be heard? I have a copy of
22 the opinion with me, and we, in fact, read it the same
23 way you did. On the top of page 15, "Therefore, we
24 hold that HUD could not preempt, without providing
25 the tenants due process of protection, insofar as

1 that had not initially been provided." We took the
2 position that there was no proper preemption and there
3 can be no proper preemption unless the due process
4 requirements have been satisfied. And on that basis,
5 we concur, or we take the position that there has
6 been no obligation evolving on HUD to issue any
7 particular order insofar as they are starting at
8 scratch --

9
10 THE COURT: There is, in this sense, that
11 there is an escrow account of money as to which they
12 agreed, and this is all part of the stipulation to
13 which the Government is a signatory, and that the
14 escrow --

15 MR. GOLDMAN: The Government is not a
16 signatory to that.

17 MR. KAHN: That is only between Mr. Goldman
18 and myself, and the Government is not a signatory to
19 that agreement, and as to what Mr. Goldman and
20 myself, we would take the position, frankly, since
21 there is no preemption now and there has not yet been
22 an order from now that the monies should be returned
23 to the tenants until such time there is an order in
24 the future, and Mr. Goldman takes the opposite view
25 that --

1 THE COURT: I don't know what you propose to
2 do? The Government, at the moment, said it will
3 render a decision on whether to preempt or not
4 preempt, on or about September 20th, in fact,
5 September 27th, 60 days. They did that right here
6 a moment ago in open court. I don't see why that isn't
7 the answer.

8 MR. KAIN: I think that is without imposing
9 upon the Court the burden of making, entering an
10 order where there is a question in the Court's mind
11 as to whether there is a proof for the delay, and
12 whether we can have a hearing. I think that is
13 avoiding the problem by accepting the recommendations
14 of the Government. They are also eager to make the
15 decision one way or the other, and they are taking
16 steps to do it, and they will, in the 60 days, and
17 perhaps if they don't do it in 60 days we can come
18 back and then --

19 THE COURT: They will take the appeal, if I
20 enter the order; so maybe that will resolve the
21 problem.

22 MR. FIELD: Can I be heard, your Honor, so
23 that there is no misunderstanding? Your Honor, that
24 is one of the options that you indicated, so it's
25 not necessarily within 60 days that a decision will

1 be made as to preempting or not.

2 THE COURT: I think I'll do that now. This
3 order is not quite right; it says "outlining why
4 preemption is necessary or unnecessary." It doesn't
5 have to outline its reasons why it isn't necessary,
6 only why preemption is necessary.

7 MR. GOLDMAN: The language was quoted from
8 your January 13th decision, that is precisely the
9 language that you put in your January 13th decision.

10 THE COURT: That may not be right, in that it
11 would be only right in the event they preempted, that
12 they give reasons. They don't have to give reasons
13 if they didn't preempt, would they?

14 MR. GOLDMAN: As I understood your January 13th
15 order, the whole purpose -- I won't demean it by
16 saying it's an exercise, but the whole purpose of
17 the decision was simply to have the parties, for
18 whatever record or whatever measure of view might
19 be available to the parties of the HUD decision, but,
20 if they are going to make a decision based upon a
21 record, I suppose the landlord is as much entitled
22 to know why the decision was founded against them as
23 the tenants are entitled to know why it was against
24 them. I don't want to read your mind, but they
25 interpreted your decision, in that language, was

1 that we --

2 MR. KAHN: Your Honor, I have it, and it is
3 on page 15, I believe it is, where you say, "After
4 considering the submission, HUD shall in written
5 decision, outline why preemption is necessary or
6 unnecessary." I would differ with my adversary.
7 I think it's generally accepted that tenants have
8 due process, and if a Government agency engages in
9 the taking of property or some protected interest,
10 they must give due process, which means, in addition
11 to a type of hearing, a statement for their actions.
12 If they deny the landlord's application, there has
13 been no taking, and there is no quote due process
14 consideration of the reasons and so forth for the
15 landlords. I don't think that I can accept that --

16 MR. GOLDMAN: I won't reargue the entire case
17 from scratch. A regulatory agreement between HUD
18 and the landlords provides, in part, HUD shall allow
19 the landlord appropriate rates to enable the landlord
20 to make a profit of some kind. I don't know the
21 exact language, it's in the shaw cause papers that
22 you have had before you. But, in fact, the landlord
23 does at least under that agreement have the right
24 to appropriate rent, and there may be in the future
25 some passable claim that HUD, on the claim of a

1 violation of that agreement, yet I think so long as
2 they have that record before them and so long as we
3 set it, seven months ago, there is probably nothing
4 inappropriate about them setting forth their
5 reasoning one way or the other. It would certainly
6 help to eliminate future confrontations.

7 THE COURT: It might. What he is saying is
8 it wouldn't violate due process, in any event, if
9 they didn't grant reasons. It might be an arbitrary
10 and unreasonable act on their part, but you would
11 be able to obtain a reversal of their position, but
12 it wouldn't necessarily violate any due process. In
13 other words, if they denied the application and said
14 that we are not going to preempt and gave no reasons,
15 you might have an arbitrary and unreasonable case,
16 but I don't know that that would deny due process.

17 MR. GOLDMAN: I think that's correct. They
18 may have an obligation under the regulatory agreement
19 which might disappear were they to make a decision
20 or express a sound basis for their decision.

21 My statement to you now is that they have
22 the records before them, and I don't know what was in
23 there but --

24 THE COURT: Well, my law clerk points out that
25 it was in New York against New Rochelle, New York

1
2 City Housing Authority, upon reaching a decision the
3 Board shall issue a statement outlining the reasons
4 for approving or disapproving the requests for rent
5 increases.

6 I think -- and I don't pass upon that at this
7 juncture -- but I think the reason for rejecting it
8 may be for the purposes as indicated, to protect
9 themselves from being charged with an arbitrary and
10 capricious action, as distinguished from a due
11 process action, in satisfaction of the hearing itself.

12 MR. GOLDMAN: I'll go along with that. It
13 was our position from the start, in the case, that
14 there is no need for due process. We are accepting
15 that due process requirement; you recognized it in
16 your order and we'll go along with it, in order to
17 get the decision --

18 THE COURT: I think then what I will do is,
19 with the exception of the landlord that wants a more
20 prompt hearing, I will order that they prepare and
21 deliver to the Court, a written decision on or about
22 September 27th, which I think is the date, after
23 which the Government has consented only to its right
24 to appeal or claim the right of appeal, and will
25 assert its right of appeal.

1
2 MR. FIELD: Did you insert that, subject only
3 to its right of appeal?

4 THE COURT: I won't insert it in the order.
5 You say that you have the right to appeal from the
6 order if I answer it today.

7 MR. FIELD: Yes.

8 THE COURT: And then the date is the 27th of
9 July and so --

10 MR. FIELD: It would be the 26th, your Honor.

11 MR. GOLDMAN: Both July and August have 31
12 days.

13 THE COURT: You're right; 26th is a Monday,
14 everyone is agreed.

15 MR. GOLDMAN: Your Honor, the second page of
16 the order has a pro forma provision with respect to
17 the captions of the case, recognizing there has been
18 a change of administrations.

19 THE COURT: Any objection to that?

20 MR. FIELD: No, your Honor. We do not formally
21 accept that, as we don't believe we are required to
22 attack the action, but that would be subject to
23 appeal.

24 THE COURT: It was at your suggestion; you
25 said it might be a basis upon which it might become
arbitrary, and unreasonable for HUD to sit on it any

1 longer. Would 60 days help?

2 MR. FIELD: It was just a suggestion. If you
3 sign it for 60 days, that would be an appropriate
4 time period.

5 THE COURT: That would be a date on which,
6 from that point forward, it would be an unreasonable
7 situation for them to have done nothing, and it was
8 on that basis that I adopted it.

9 * * *

ADMINISTRATIVE DETERMINATION - BIRCHWOOD TOWERS, 012-00901
SECTION 1 and 012-00902 SECTION 2

Pursuant to the Court Order of July 28, 1977, in Lynn Argo, et. al v. Hills, the following statement is made:

The Department received tenant comments submitted by their attorney Marc Kahn in letters dated April 7, 1977, and May 23, 1977.

The HUD New York Area Office and the HUD New York Regional Office reviewed the tenant comments, the application for a rental increase which was submitted by the mortgagors, as well as supporting documents concerning the expense figures used by the mortgagors to support their rent increase application. The rents attainable under Conciliations and Appeals Board (CAB) at the time HUD processed the application and made its Jeopardy determination were also considered. The following is our response to tenant comments:

Tenant Objection #1. Failure to submit a six month projection of rent attainable under CAB rules as required by HUD rules.

Answer. HUD regulations do not require said submission. Although no submission was made, adequate data was submitted to permit HUD to determine that the rents allowed by the CAB rules were less than jeopardy rent.

Tenant Objection #2. That although the owners complained of hardship, they failed to implement the full 3-1/2% electricity increase to which they were entitled. The assertion was that if the owners needed the additional rent, they surely would have implemented this increase.

Answer. The owners' attorney pointed out in his reply dated April 20, 1977, that the owners charged the electricity increase whenever permitted by law. In some cases where the CAB rent exceeds the fair market rents, only the fair market rent was charged. To do otherwise would render the apartments unmarketable and lead to financial instability. One reason for preemption in this case is the disparity which similar unit rents have in relation to each other. The disparity results from local vacancy decontrol. Owners cannot be expected to raise the rents on units whose rents are at the ceiling of fair market value.

Tenant Objection #3. The mortgagees of the two projects offered an opinion to the tenants that the projects were not in economic jeopardy.

Answer. The owners had requested a deferment of principal payments on both mortgages and said requests were denied as unwarranted.

A decision on the part of the mortgagees to defer for a year the principal payment amounting to approximately \$10,000 and \$19,785 per month, at 5-1/4% interest while the prime rate is 9%, could as easily represent a business decision on behalf of the mortgagees as to its profit margin rather than their opinion as to the need of such relief in relationship to the mortgagors' financial picture. The 1974, 1975, 1976 statements on Section 1 show cash losses of \$52,368, \$14,825, and \$54,625, while amortization to principal was shown as \$116,088, \$120,639, and \$122,332. In Section 2, cash losses were \$11,616, \$1,354 and \$26,016 while amortization was \$221,446, \$231,563, and \$217,461. Granted, had the mortgagees given relief during any of these years, the projects would not have been in a negative cash position. However, a deferment of principal payment is a privilege and not a requirement. It remains a fact that the mortgage payments must be made at some point in time, in order that the debt, be paid in full at the end of the mortgage term. Putting off today an obligation, to be paid out of the projected future income which may or may not be available, is not always an answer to the establishment of a sound financial situation. When the Department determines jeopardy, the total debt service, mortgage insurance premium, project operation and management fee expenses must be considered as costs to be satisfied out of project income.

In addition to the three objections listed above, the April 2, 1977 letter contained a number of mathematical exercises designed to show that preemption was not necessary. These assumptions were erroneous because they were based on the belief that (1) jeopardy rental will never change while rental allowed by CAB rules will ultimately reach and surpass the jeopardy level; (2) annualized monthly rentals could be used to accurately project annual income and vacancy, etc; and (3) hardship relief could be applied across the board, etc.

The tenants' assertion that miscellaneous income was not considered by HUD in its calculations of jeopardy rent, is not supportable. Of the \$98,727 per year in miscellaneous income, \$72,348 of 73% represents garage rent. In determining jeopardy rent, actual garage income per the net lease was deducted from the total rent computation to arrive at the net apartment rent. Thus, miscellaneous income was deducted.

The tenant comments attempted to show that by annualizing income as of September 1976 the project should have done better than it did and preemption should have been for a lower amount. Again, these comments are based on several questionable assumptions:

1. Income for one month was annualized;
2. An arbitrary 4% vacancy factor was used;

3. 1976 expenses were used and considered to be what the project needed to operate. They did not consider deferred maintenance, etc; and
4. Contrary to the statement in objection Number 12 of the April 7, 1977, letter, the rent roll was increased to \$95,651.57 through the use of RSA allowed increases. I believe that in using CAB he means RSA, if read in context of question 13.

Tenants objected that we did not make a projection of rentals to consider the effect of normal increases. As stated in our answer to Tenant Objection #1, we did make such projection.

Tenants used a variety of assumptions to predict what collectable rentals would be in one year and tried to show that those rentals would exceed jeopardy rentals and, by adding miscellaneous income, would provide the landlord with a substantial profit. We do not agree with this conclusion because it is based on erroneous assumptions. The main assumption is predicated on a comparison of the projected 1976 rent roll using the rents attainable in September 1976, against the jeopardy rental which used actual 1974/1975 expenses. This is inconsistent with the facts as they were at the time the Department asserted federal supremacy over local rent control.

There were a number of tenant objections concerning the owners' financial statements and projections. These apparently involved data submitted to CAB in support of hardship. Comments included criticism of (1) "stale" data, (2) inclusion of depreciation as an expense, (3) consideration of amortization payments as a cash requirement of the project, (4) inclusion of manager's salaries in payroll, (5) use of 5% management fee, and (6) inclusion as expenses amounts paid to related companies for work done by them.

We offer the following in response to those objections:

1. We agree that the projects expense data is stale in that it covers only 1974/1975. However, as stated earlier in our review, we also found that the 1976 expenses exceeded income by \$54,625 in Section I and \$26,016 in Section 2. Therefore, the jeopardy rent level is presently set lower than it would be if we use 1976/1977 expense data. This further supports the case for the need of preemption;
2. We do not include depreciation as an expense in our computations;
3. HUD's mortgage insurance feasibility test is based on the premise that rentals would be adequate to pay

full debt service including amortization of principal. Thus, we see it as a definite cash requirement to be satisfied out of project income;

4. We do not include manager's salary as a part of operating payroll when computing either the total required rental or even jeopardy rental;
5. A 5% management fee is reasonable for these projects and is the norm used by the HUD New York Area Office for most nonsubsidized projects; and
6. We do not object to related companies being paid for work done at a project, provided that the work is properly done and the fees charged are reasonable. We have no evidence that the work was not properly done or that the fees charges were not reasonable.

In the May 23, 1977 letter tenants voiced two broad objections. In the first argument, contained in comments 1 through 6, tenants attempt to show that preemption should no longer be necessary since in their opinion the present 1977 rent roll should exceed the jeopardy rent level.

As noted previously, the landlord advised HUD that the September 1, 1977 rental for both projects, including vacancies, was \$98,514 for Section 1 and \$199,954 for Section 2. Both amounts are less than the jeopardy levels of \$100,375 and \$201,232 respectively. Thus, it appears that preemption is still needed to reach rentals approved based on 1974 and 1975 costs. If anything, the tenants' point reveals the need for an annual determination of jeopardy rentals. Otherwise, the more passage of time (in this case one year has already elapsed) will insure that outdated jeopardy levels will be attained without the collection of the needed income during that period which is necessary to satisfy the projects' financial obligations.

In the second argument, comments 7 through 10, the tenants did not feel that HUD should include any return to the mortgagors in the determination of jeopardy rents.

We disagree. In taking out the 1/2% return to the mortgagors which is in the rental formula, we have reduced substantially the potential profit factor.

While it is true that the rent formula established by HUD to administer the Section 207 program has other potential profit beyond the 1/2%, this potential profit can only be taken out of project funds by the owner after all project obligations have been satisfied and the project is in a "surplus cash" position as required by HUD's Regulatory Agreement with the owner. This administrative structure is necessary to meet HUD's program responsibilities.

The potential profit factor is established at the initial processing stage before construction of the project. Any increase in rental charges must be based on actual increases of expenses and are not designed to increase or decrease this profit factor which motivated private participation in the Federal program.

Tenants question HUD's 5% vacancy rate which they believe is not realistic because actual vacancy experienced was much lower.

First of all, the vacancy factor of 5% is to cover vacancy loss, tenant turn over loss, and noncollectable rents. The prediction of vacancies is hardly an exact science. HUD requires a rent roll which would break even at 95% occupancy to protect the Department's financial position. This is in accordance with HUD's normal practice. If the Department used 98%, 99% or 100% occupancy, and some event occurred which produced vacancies, turn over and/or rental collection losses of more than 5%, the financial stability of the project would be threatened.

Based on these tenant comments and the 1974/1975 financial data, I certify that the rentals permitted under local law are insufficient to provide income necessary to protect the Department's economic interest in these projects. I hereby reaffirm my administrative Determinations of September 1, 1976 which preempt local rent control over Birchwood Towers Section I and Birchwood Towers Section II.

Fred W. Pfaender
Fred W. Pfaender
Director

Office of Loan Management

October 11, 1977

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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LYNN ARGO, et al.,	:	
Plaintiffs,	:	76 Civ. 1969 (TCP)
-against-	:	<u>PRESETTLED ORDER OF</u>
PATRICIA ROBERTS HARRIS, Individually	:	<u>PRELIMINARY INJUNCTION</u>
and as SECRETARY OF THE DEPARTMENT OF	:	
HOUSING AND URBAN DEVELOPMENT OF THE	:	
UNITED STATES, et al.,	:	
Defendants.	:	

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This case, having come on to be heard upon the plaintiff's Order to Show Cause, dated October 19, 1976, why a preliminary injunction, pursuant to Rule 65(a) Fed. R. Civ. P., and declaratory judgment should not be granted invalidating and enjoining enforcement of a regulation, 24 C.F.R. Sec. 403 et seq. (1975), promulgated by defendant PATRICIA HARRIS as Secretary of Housing and Urban Development of the United States ("HUD") and annulling the HUD determination of September 1, 1976, pursuant to said regulation, which determination preempted the application of the New York City Rent Stabilization Law and Rent Stabilization Code of 1969 to the three (3) apartment buildings owned by defendants MORRIS SOSNOW, KATE SOSNOW, LEONARD R. SCHWARTZ, JERROLD LIEBERMAN, BERNICE LIEBERMAN and LORRAINE S. SANFORD doing business as Birchwood Towers #1 Associates and Birchwood Towers #2 Associates ("the Landlords"), known as the Birchwood Towers, Forest Hills, New York, where plaintiffs reside; and, upon the cross-motion of the Landlords for a preliminary injunction restraining interference with collection of HUD approved rents; and the attorneys for the respective parties having been heard by the Court on November 5th and on November 12, 1977, and the Court having filed its Opinion and Order dated January 13, 1977; and having

appecifically determined that HUD's preemption regulation, 24 C.F.R. Sec. 403 et seq. (the "regulation") is a valid exercise of Congressionally delegated powers consistent with HUD's statutory authority and is a necessary and reasonable means of carrying out such authority provided that Tenants in the projects subject to being preempted are afforded an opportunity to inspect the Landlords' application and to submit to HUD written objections or reasons why HUD should not preempt local rent control and any material in support thereof and that HUD considers the Tenants' submissions and renders a written decision outlining why preemption is necessary or unnecessary; and further determining that the application of the regulation results in a direct conflict with the state and local laws governing local rent regulation of Birchwood Towers and accordingly, under the Supremacy Clause of the United States Constitution, Article VI, Clause 2, said local rent control legislation must yield; and the tenants having inspected the Landlords' application for preemption and having submitted to HUD their written objections to preemption with their material in support thereof, which applications, objections and the Landlords' responses thereto, have since been filed with the Clerk of this Court and made a part of the record herein; and HUD having considered such submissions and made its written determination dated October 11, 1977, outlining why a preemption is necessary and reaffirming local rent regulation over Birchwood Towers, it is

ORDERED AND DECREED, that:

1. The Landlords' having demonstrated irreparable injury and substantial probability of success on the merits that the regulation is a valid exercise by HUD of congressionally delegated powers and that the application of the regulation results in a direct conflict with state and local laws governing rent regulation in the City of New York such that, under the Supremacy Clause of the United States Constitution, Article VI, Clause 2,

said local rent regulation must yield, and the Tenants having now been granted the procedural due process rights required by this Court's Opinion and Order of January 13, 1977, the HUD determination of October 11, 1977 reaffirming retroactively the preemption determination of September 1, 1976 lawfully and validly preempted local rent regulation of Birchwood Towers; accordingly, plaintiffs' motion for a preliminary injunction is denied and the Landlords' motion for a preliminary injunction restraining interference with collection of HUD approved rents is granted to the extent set forth below;

2. The Landlords may pass on the increases authorized by HUD herein to Tenants with existing leases, subject to the provision of this Court's Order of November 12, 1976 that each tenant who is a member of the plaintiff Birchwood Towers Tenants Association shall have the right to cancel his/her tenancy by, within thirty (30) days after service upon the members of the class of a copy of this Order, giving written notice to the Landlords that such tenant/member will vacate such dwelling unit within sixty (60) days thereafter and by actually vacating such dwelling unit within such sixty (60) day period.

3. Commencing November 12, 1976 the HUD approved rents are the legal maximum rentals which Landlords are entitled to receive; provided however that during the pendency of this action all members of the class shall, without distinction, pay the higher of then applicable CAB rentals or the HUD rentals; and provided further that where such HUD rental exceeds such CAB rental, such excess ("the HUD excess") shall continue to be paid to the attorneys for the class in escrow to be held in accordance with paragraph 3 of this Court's Order dated November 12, 1977; and provided further that where such CAB rental exceeds such HUD rentals, such excess ("the CAB excess") shall be paid by all members of the class to the attorneys for the class, Rosenstein & Kahn, Esqs., to be held in escrow until final determination of this

action and all appeals. Within thirty (30) days from the date hereof, Landlords shall account in writing and pay to the attorneys for the class any CAB excess paid by any member of the class since March 1, 1977 to be held in escrow as aforesaid.

4. All persons who became or shall become tenants of Landlords at Birchwood Towers after March 18, 1977 or hereafter shall be excluded from the class if such persons request exclusion in writing postmarked within thirty (30) days after service of a copy hereof or the execution of their lease, whichever is later. At the time a new tenant executes a lease, Landlords shall deliver to such tenant a copy of the Class Notice dated February 18, 1977 and of this Order.

5. The Landlords shall serve upon all members of the class a copy of this Order within ten (10) days from the date hereof.

Dated: New York, New York
November 25, 1977

/s/ TCP
Thomas C. Platt
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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LYNN ARGO, et al	:	
	:	
Plaintiffs,	:	76 Civ. 1969 (TCP)
	:	
-against-	:	<u>NOTICE OF APPEAL</u>
	:	
PATRICIA HARRIS, individually	:	
and as Secretary of Housing	:	
and Urban Development of the	:	
United States, et al.	:	
	:	
Defendants.	:	

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PLEASE TAKE NOTICE, that LYNN ARGO, and each of the plaintiffs, individually, and as representatives of the class, hereby appeal to the United States Court of Appeals for the Second Circuit from so much of the preliminary injunction of the United States District Court for the Eastern District of New York, Honorable Thomas C. Platt, United States District Judge, entered in the office of the Clerk of said Court on November 25, 1977, which granted the motion for a preliminary injunction of the Defendants MORRIS SOSNOW, KATE SOSNOW, LEONARD R. SCHWARTZ, GEROLD A. LIEBERMAN, BERNICE LIEBERMAN and LORAINES S. SANFORD d/b/a BIRCHWOOD TOWERS #1 ASSOCIATES, and d/b/a BIRCHWOOD TOWERS #2 ASSOCIATES; and specifically appeal from so much of the injunction decreeing that the foresaid Defendants have demonstrated irreparable injury and substantial probability of success on the merits, and from so much of the injunction

which affirms retroactively the taking of rents from Plaintiffs pursuant to a HUD determination of September 1, 1976 to the extent such determination was issued without due process of law.

Dated: New York, New York
December 9, 1977

Yours, etc.

ROSENSTEIN & KAHN
Attorneys for Plaintiffs
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By



A Member of the Firm

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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LYNN ARGO, et al.,	:	
Plaintiffs,	:	NOTICE OF APPEAL
-against-	:	76 CIV. 1969
	:	(TCP)
PATRICIA ROBERTS HARRIS,	:	
Individually and as SECRETARY	:	
OF THE DEPARTMENT OF HOUSING	:	
AND URBAN DEVELOPMENT OF THE	:	
UNITED STATES, et al.,	:	
Defendants.	:	

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S I R S :

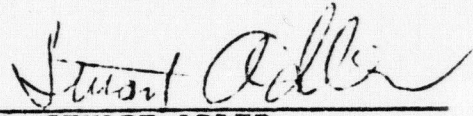
Notice is hereby given that the Defendant, Housing and Development Administration of the City of New York (HDA) hereby appeals to the United States Court of Appeals, for the Second Circuit, from so much of the order entered herein on November 29, 1977 which ordered and decreed that application of the New York City Rent Stabilization Law and Rent Stabilization Code of 1969 to the subject apartments buildings was pre-empted by federal law and as ordered and decreed that HUD determined rentals shall apply to these buildings, and from so much thereof as allows the defendant, The Department of Housing and Urban Development's (HUD) current pre-emption order to be effective as of the date of HUD'S original pre-emption order, which had been found to be in violation of due process procedural requirements.

Yours, etc.,

W. BERNARD RICHLAND
Corporation Counsel of
THE CITY OF NEW YORK
Attorney for the HOUSING
AND DEVELOPMENT ADMINISTRATION OF THE CITY OF NEW YORK
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132a

By



STUART ADLER

Dated: New York, NY

December 29, 1977

TO: ROSENSTEIN & KAHN ESQS.
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Brooklyn, NY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

LYNN ARGO, et al.,

Plaintiffs,

-V.-

PATRICIA ROBERTS HARRIS,
et al.,

Defendants.

NOTICE OF APPEAL

W. BERNARD RICHMOND

~~W. BERNARD RICHMOND~~
WILLIAM RANKIN, JR.

Corporation Counsel,

Attorney for.....

Municipal Building,
New York, N. Y. 10007

*Due and timely service of a copy of the
within
is hereby admitted.*

New York,19.....

.....
Attorney for

To

....., Esq.,
Attorney for

Received - Jan. 31, 1978 - M. Cardini

RECEIVED
U.S. ATTORNEY

JAN 31 5 19 PM '78

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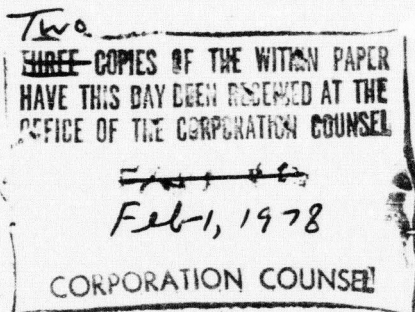
Joseph A. Cardini
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Gardner, Starnoff

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FEBRUARY 1 1978
ATTORNEY FOR
ELLERRE S. FOR

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